SELECTIONS FROM THE RECORDS

OF THE

MADRAS GOVERNMENT.

NEW (REVENUE) SERIES.

No. III.

MADRAS RECORD OFFICE

A COLLECTION OF PAPERS

RELATING TO

CONTROL OF GOVERNMENT OVER WATER

IN THE

MADRAS PRESIDENCY

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504

51-56

MADRAS:

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GOVERNMENT OF MADRAS.

REVENUE SECRETARIAT.

UNDER SECRETARY'S HOUSE,

(MADRAS).

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I

(1)

Letter—from W. H. Bayley, Esq., Secretary to the Board of Revenue.
To—Sir H. C. Montgomery, *Bart.*, Chief Secretary to Government.
Dated—Fort St. George, 3rd March 1851.
No.—101.

I am directed by the Board of Revenue to transmit to you, for the consideration and orders of the Right Honourable the Governor in Council, the accompanying correspondence * with the Acting Collector of Coimbatore relative to the excavation of some new channels for the supply of water to the houses and gardens at Ootacamund. The arrangements proposed by Mr. Thomas and the Survey Engineer, Captain Ouchterlony, seem at length to have met with the consent of the householders at that station, the only difficulty being with regard to George Norton, Esq., and that the Board trust may be overcome, inasmuch as in his last letter Mr. Norton declares himself "ready in a liberal spirit to enter into any arrangements, and "discuss the practicability of them for the accommodation of others."

* Not printed.

2. The subject of the supply of water to the different properties on the Neilgherries has been for some time before the Board, and in order to place the progress of the question before Government in one view, I am directed to submit a resumé of the correspondence.

3. Paragraph XV of the "Manual" is as follows:—"It is to be clearly understood that Government reserve to themselves in the fullest manner the complete control over all streams, springs, reservoirs, and channels of irrigation. No stream is to be diverted nor its water taken for purposes of irrigation, without the special cognizance and sanction of the Revenue authorities of the district. Springs, streams, rivulets, etc., should, whenever practicable, be specially exempted from the lease."

Letter to Supreme Government, paragraphs 54–63.

4. On the 22nd May 1849, the Acting Collector informed the Board that some houses and lands had more water than they wanted and some less, but that there was a sufficient supply for all, if properly distributed, and that certain parties whose channels were cut at a time when any one diverted the springs as he pleased, now claim them as private property. Mr. Thomas had consulted with the Engineer and Commanding Officer, and was of opinion that the only plan was "to take the spring heads and channels under Government control, and regulate their distribution on some fair and general system"; that channels should be cut at Government expense, and a small water-rate levied on proprietors, the distribution to be apportioned by a Committee consisting of the Civil and Survey Engineers, the Commanding Officer and Collector. With this letter Mr. Thomas forwarded copy of a *notice* issued by him prohibiting new cuttings, and claiming on the part of Government the right to the water.

5. On the 23rd July 1849 the Board, in transmitting this letter to Government, stated that they agreed as to the right of Government to the water and approved of a Committee, but considered that they ought "to confine themselves to ascertaining the rights of Government to spring heads and to water rising or passing through *Circar ground*." They objected to a compulsory water-rate.

6. The Government on the 11th August 1849, in noticing this letter, inform the Board that the question of distribution of water is under reference to the Government of India,† and state that "the notice is considered proper, and should be strictly enforced on all lands not regarded or known to be *private property*."

† The Board understand this to be in connection with the rules adopted in the Dheyra Doon and which were subsequently transmitted to them; but these rules bear no application to the Neilgherries.

7. On the 14th January 1850 Mr. Thomas brought before the Board a correspondence with George Norton, Esq., as to the right of a Mrs. Ryan to lead off water from Elk Hill Wood in Mr. Norton's conservancy, and requested a reply to three questions to guide him in the determination of many disputes of a similar nature—(1) What length of time constitutes such "usage" as to give a *right* to a channel, (2) whether that right extends beyond the proprietor's limits, supposing the stream to *originate* in Circar land and brought down by an artificial cut; (3) whether such proprietor can claim more than is required for his land to the exclusion of others below him in water level.

8. To these queries, the Board replied on the 7th February 1850 that as to (1) due consideration should be given to long usage, provided it has been acquiesced in; (2) the right can only extend to the limits of the property, but that any interference with a supply of water traversing such property would involve a breach of such right; (3) where a proprietor has enjoyed the use of a certain supply of water, to limit such present supply would be an invasion of right.

9. The Board, at the same time, required Mr. Thomas to lay before them a set of rules such as might in his opinion suit the various cases likely to occur.

10. On the 18th February 1850 the Acting Collector furnished a set of rules, again referred to the fact of there being many old channels *rising* in Circar land which might be so arranged as to benefit more houses than they do now, without inconveniencing those now supplied, but that there was no intention of interfering with springs rising in private limits.

11. On the 25th March 1850, the Board intimated to Mr. Thomas their doubt whether the Committee, as proposed by him, would have legal authority to carry out their plans, in the event of proprietors' refusing compliance, and that they considered his set of rules to be too scanty for the purpose required. They objected to any alterations being enforced on the mamool channels of old householders, as also to the imposition of a water-rate.

12. On the 23rd April 1850, Mr. Thomas replied that he was not able to propose any other measures than what he had before suggested and could not suppose that any arrangement planned by a fair committee would be objected to in a Court of Law. In his opinion, if the Board's views were carried out, little could be done, as the available streams have been monopolized; and if "mamool" confers a right, others must be deprived. He refers to a passage in the Proceedings of the Board, 15th June 1848, where they expressed their opinion that the appropriation of water without permission conveyed no valid title, and that the Collector should take the control of the water.

13. The Board in their Proceedings of 6th June 1850 informed Mr. Thomas, that under existing circumstances it would be better to deal with each case on its own merits. With regard to the control of the water, they considered it sufficient to abide by the "Notice" enclosed in his letter of 22nd May 1849, and which had been approved of by Government, but this notice did not in their opinion "authorize him to drain off water from a channel constructed by a private individual (at his own expense) against his wishes. It is true that he might not have had special authority to cut that channel,* but when these kind of works were undertaken, it was not considered necessary to obtain such sanction." The Board suggested that in some cases, disputes might be obviated by taking the required channel from the spring head (when in Circar ground) rather than take a branch from a stream running through private property.

* The Board were not informed if Mr. Norton was alluded to. That gentleman *had* sanction to reconstruct his channel.

14. After a period of six months, the question was revived by Mr. Thomas' letters of 9th January 1851 and those of the 3rd and 5th of February, which is the portion of the correspondence that the Board chiefly wish to submit for the consideration of Government.

15. In the first of these letters he proposes the execution of a work planned by Captain Ouchterlony, which at the cost of 800 rupees will enable all parties to have a fair supply of water. To keep the main and branch channels in repair,

a small water-rate is proposed to be levied. To the execution of the work and the levy of the rate, nearly every householder has agreed as shown by their signatures to the enclosure in Mr. Thomas' letter, the exceptions being George Norton, Esq., Revd. Mr. Blenkinsop who refuse, S. Crawford, Esq., who has proceeded to England, I. Fullerton, Esq., who resides at Madras and has yet to be asked, and Captain Pope who has water enough. It does not appear that any of these refusals at all affect the question of cutting the channel, except that of Messrs. Norton and Crawford,* the correspondence with whom the Acting Collector forwarded subsequently in the two last of the three letters above referred to. From Captain Ouchterlony's report submitted with Mr. Thomas' letter of 9th January, accompanied by a map, it is seen that it is requisite that the public stream should be united with Mr. Norton's, where his culvert crosses the road, and conveyed with it by the same culvert widening and improving the present channel onwards, but instead of suffering the water to run to waste into the nullah below Shoreham (Mr. Norton's), an *adequate stream* only should be diverted to that house from the main, which would then be carried on for the general benefit of the community holding land on the south side of the lake.

* The Board are not aware if Mr. Crawford's assent was obtained before his departure.

16. The controversy between Mr. Thomas and Mr. Norton seems to turn upon two questions: first, whether Mr. Norton has a right to the enjoyment of all the water brought down by his stream; and secondly whether the proposed plan of channel is any detriment to his property, and can be conducted through it without his consent.

17. The Government will observe that the Board have not at any time decided that Mr. Norton's right is indisputable, though they consider that long usage and implied sanction establish a claim that ought not to be set aside, except (if at all) on the clearest grounds of public necessity. The mere fact of his tenaciously maintaining a monopoly when by yielding to the general wish he might confer an advantage upon others without any apparent injury to himself is not, in the Board's opinion, sufficient to authorize an enforcement of the Engineer's plan, and in this point they cannot concur with Mr. Thomas or approve of the general tone in which his correspondence with Mr. Norton has been conducted. The Proceedings of the Board quoted by him in support of his views had reference to a case where the opening of a new channel was of very recent occurrence, and had been done without leave or notice. There is no doubt but that in future the Collector must exercise a full control over the cutting of new channels, but Mr. Norton's right of occupancy was very different from that of General Gibson's, and though his title may be defective in point of form and the sanction granted by the Sub-Collector in 1836 vague, yet the Board are by no means disposed to take advantage of this to institute compulsory measures, even though it might be a public convenience.

18. The other question is that of detriment to Mr. Norton's property—Mr. Thomas insisting on the fact that the plan can be productive of no such detriment, Mr. Norton asserting that his property may be deteriorated. The Board observe that the arrangements proposed by Captain Ouchterlony will leave to Mr. Norton's two houses "as much (water) as they have *usually had*" and this throughout the correspondence Mr. Thomas assumes to be the utmost that Mr. Norton can expect; whereas from certain observations made both by the Acting Collector and Engineer, it appears that Mr. Norton's properties are now tendered for sale in several allotments, each of which will expect a provision of water, so that probably Mr. Norton is anxious to secure the right to a larger supply than what has hitherto been found necessary.

19. The Board have thus endeavoured to lay before Government the whole state of the case, in accordance with Mr. Thomas' desire. If with reference to the concessions made by Mr. Norton at the close of his letter of 14th January the matter can now be arranged to his satisfaction, the Board consider that the proposed channel would be productive of so much public convenience that they would beg to recommend the expenditure of Rs. 800, which it appears will be necessary for effectually carrying out the plan. They do not apprehend any

difficulties that may not be easily arranged, if the details are conducted in a conciliatory and liberal spirit, the importance of which it will be their duty to impress on the local authorities.

20. * * * * *

21. * * * * *

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(2)

Extract from the Minute of Major-General Sir Henry Pottinger, dated 7th April 1851.

1. I have gone most carefully through the above letter and the papers which accompany it as well as the former correspondence, a great deal of which had before come under my notice.

2. * * * * *

3. The whole question seems to me to be contained in the smallest compass. It is simply to be pronounced whether Mr. Norton has established a prescriptive right to the entire use and appropriation of all the water, which has its source in Government land and has been brought by him—at some expense—into his locations.

4. After full and impartial consideration, I am myself of opinion that he has not such a right. The permission granted to him was undefined and so far as I can see unauthorizedly accorded by the Sub-Collector, but I cannot conceive that he is entitled to appropriate the surplus water, under the altered circumstances of the Hills.

5. With regard to any right that Government may possess to carry a channel through Mr. Norton's grounds, I am diffident of offering my judgment on that legal point. But I still think this stumbling block to a satisfactory solution of the dispute is capable of being removed by a little conciliation tempered with firmness, and I should wish the whole matter to be discussed in Council.

6. I think Government should incur the expense of making the arrangement for distributing the water proposed by the Civil Engineer, if all parties consent to it.

7. * * * * *

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(3)

Extract from the Minute of the Hon'ble Mr. D. Elliot, dated 1st May 1851.

Some of the houseowners at Ootacamund, having complained of an insufficiency of water and having applied to the Collector to take measures to afford them a better supply, the Collector consulted Captain Ouchterlony, the Engineer by whom the survey of the Neilgherries was executed, and both being satisfied that there was a sufficiency of water to supply the wants of all, if due arrangements were made for conducting and distributing it, so as to prevent waste, a plan was concerted between them for effecting the desired object.

A part of the plan was the enlargement of a channel formed a good many years ago by Mr. Norton for bringing water from Dodabetta to his property and the extension of it to carry the surplus water, which, after a full supply has been given to Mr. Norton's houses and grounds now runs to waste in a swamp, to other properties beyond Mr. Norton's on the south side of the lake, which divides the station.

The Collector having addressed a letter to Mr. Norton to ask whether he would consent to this arrangement and especially to the main channel being conducted through his grounds and having intimated in his letter that he thought Government had a right to carry it into effect, at any rate, Mr. Norton answered

by denying the right asserted and declining to consent to the proposed plan, since to consent would be to "concede a right in Government to come upon his private property and deal with it in any manner it might think fit with a view to the accommodation of any individuals whom Government might deem the public." Further, in reference to an observation of the Engineer that the sanction of Government to Mr. Norton's bringing water to his grounds by the channel in question can be withdrawn at its will and pleasure, Mr. Norton takes "the liberty of questioning as well the legality as the justice of such a step to my injury, for, the sanction of Government to my taking the water has no limitation of Government's mere will and pleasure."

I do not think it can be maintained that Government has the right to carry a channel through Mr. Norton's grounds without his consent, presuming that he holds under a grant or grants in the old form.

On the other hand, looking to the terms of the document, on which Mr. Norton apparently relies in asserting an indefeasible right to take water from the source from which his channel is at present supplied, it seems to me a strange delusion on his part, which leads him to regard it as giving him any title. It is simply a "memorandum by Mr. Smith, Sub-Collector of Malabar," declaring his "opinion" apparently for the information of his superior, the Collector, or of the Board of Revenue through him, that there are no objections to Mr. Norton drawing water to his own property from the particular source indicated, by a channel formed at his own expense. The permission, which the Sub-Collector thought might be given, was not in fact given by him so far as appears and there is no evidence of its having been given by the Collector, still less by the Government. I am at a loss to understand therefore what Mr. Norton means when he speaks "of the sanction of Government to his taking the water having no limitation of Government's mere will and pleasure". Government gave no sanction to his taking the water and of course imposed no limitation.

But even construing the memorandum of the Sub-Collector into a positive permission, which is a stretch, in my opinion, quite inadmissible, it would be a still greater stretch to construe it into an *exclusive* grant of all the water that could be drawn from the source in question.

Mr. Norton's admission in reference to the water springing in Elk Wood that "with the exception of that portion of the water, the use of which Government has already granted or sanctioned, Government itself has the monopoly of the water, and can grant or withhold it as it thinks proper", I conceive may be applied generally. Where Government has formally granted or sanctioned the use of certain water by an individual as an *exclusive privilege*, it might be debarred from regulating his use of it, although it might be found that the grant had been improvidently made and gave him more water than he needed and that the excess which his neighbours much wanted ran to waste. But when Government is not so bound up, and there is nothing but a use which has been allowed by sufferance, to prevent its interference for the regulation of the supply of water from a certain source, I am of opinion that it ought to interfere for the public benefit.

On the above view I think it may fairly be said to a party, in the circumstances of Mr. Norton, that Government, wishing to accommodate other landowners by giving them a share of the water drawn from the source from which his land and houses have hitherto been supplied, which is more than is necessary for his purposes, but willing, at the same time, to continue to him the privilege he has been suffered to enjoy though without grant or sanction from competent authority, will take into its own charge the construction and maintenance of a sufficient channel for conducting the water to his property first and afterwards to the other properties which are to benefit by it, if he will consent to the present channel, so far as it goes, being improved and adapted for this purpose and to its being carried on through his land to serve the other properties. Otherwise, that Government never having granted nor sanctioned any privilege to him and not recognizing any right on his part, but unwilling to deprive him of the advantage he has actually enjoyed of drawing water from the source in question, will permit him still to do so by the channel constructed by him, but will limit the quantity

of water to be allowed to pass by it, upon an estimate of what he has hitherto used and will draw off the surplus by another channel for the supply of the other properties contemplated in the general plan. This right of Government must be insisted upon, and I hardly think Mr. Norton would venture to contest it upon the ground of such a document as that described, if he has, as I suppose, nothing more valid.

Thus, my opinion is that while the Collector went much too far in his assertion of the right of Government to carry a channel through Mr. Norton's grounds without his consent, and was injudicious in asserting it when he was asking his consent, Mr. Norton, on the other hand, had just as little warrant for asserting an exclusive right to the water which he claims as appropriated to him. I would add that I conceive it was an insufficient excuse for declining to give his consent to a channel being carried through his land, because the proposal was coupled with the assertion of a right in Government, as he construed it, to invade his property at will—for he might have consented under protest on that point—and I must observe that Mr. Norton's surmises of the extent to which such a right might be arbitrarily exercised by the Government are somewhat extravagant, not to say, outrageous.

But as Mr. Norton in his last letter declared himself ready in a liberal spirit to enter into any arrangements and discuss the practicability of these for the accommodation of others, it may now be possible to settle the question. The communication for this end, I think, had better pass between the Board and Mr. Norton.

I agree with the President that the expense of carrying out the plan proposed for distributing the water should be borne by Government.

* * * * *

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(4)

Minute by the Hon'ble Mr. Thomas, dated 1st May 1851.

I have only to express my concurrence in the view of the Right Honourable the President, that the question before the Government is resolved into this. Has Mr. Norton an exclusive right, or not, to the water now taken by him? With a knowledge of all the localities and after an attentive perusal of these papers, I cannot think that this exclusive right is vested in Mr. Norton.

2. The water head, or spring, is a mile from Mr. Norton's property, the channel is cut through Government land, for which, I am correct, I believe, in saying that Mr. Norton has no grant. Moreover, the water channel crosses the high road from Coimbatore into Ootacamund—a road formed before Mr. Norton's houses were in existence—and the Government must surely have power to interfere with a channel or water led over a public road.

3. I can also see nothing in the vague "memorandum" of the Sub-Collector, Mr. E. Smith, of the 5th December 1836, which can be construed to confer a title to this water exclusively upon Mr. Norton, even supposing Mr. Smith had authority to do so. It also does not appear that it has ever been favourably confirmed by the Collector, or the Revenue Board, or the Government. And all that can be alleged in favour of Mr. Norton's right is a permitted usage, in the case of one of his houses "Shoreham" of 15 or 16 years standing, and in the case of the rest of his property, of 6 or 8 years and less. I am of opinion, therefore, that the Government has and should maintain its claim over this stream of water, as over the other springs rising in Government land and running within private limits. At the same time Mr. Norton, as a large proprietor of land, and from his enjoyment of this water, has a strong, equitable, though not exclusive, right to an ample supply for all his properties.

4. On the further point under consideration, I am disposed to maintain the right of Government to take private property at a fair and just compensation, when

required for public or State purposes. The Government now stands, as the Government it superseded, in the position of paramount landlord or proprietor, and as such, unless it has by some deed specially divested itself of its rights it could take land needed for public uses, such as water channels and roads, giving the private proprietors a fair and just equivalent. This is a right I should think inherent in the Government. It may be well to declare and define it by express enactment, but it exists, I think, independently of such enactments and its exercise may be, and often is, essentially necessary for the general interests.

5. It is the same principle, I suppose, which rules every Act of Parliament, giving powers to canal or railway companies to take private property. I can see no force in Mr. Norton's argument that, if this power is in the Government, it may be so used as to render private property valueless. The State would never desire to use the powers arbitrarily to injure individuals but only when it was necessary for the general interests, and I much doubt if it will be proper to permit this right of the State to be set aside, as appears to me to be the tendency of the Board's Proceedings.

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(5)

Extract from the Minutes of Consultation, under date the 17th June 1851, No. 587.

Paragraph 1.—Some of the house owners at Ootacamund having complained of an insufficiency of water, and having applied to the Collector to take measures to afford them a better supply, the Collector consulted Captain Ouchterlony, the Engineer by whom the survey of the Neilgherries was executed, and both being satisfied that there was a sufficiency of water to supply the wants of all, if due arrangement were made for conducting and distributing it so as to prevent waste, a plan was concerted between them for effecting the desired object.

2. A part of the plan was the enlargement of a channel formed some years ago by Mr. Norton for bringing water from the Dodabetta Hill to his property, and the extension of it to carry the surplus water (which after a full supply has been given to Mr. Norton's houses and grounds now runs to waste in a swamp) to other properties beyond Mr. Norton's on the south side of the lake which divides the station.

3. The Collector having addressed a letter to Mr. Norton to ask whether he would consent to this arrangement, and especially to the main channel being conducted through his grounds, and having intimated in his letter that he thought Government had a right to carry it into effect at any rate, Mr. Norton answered by denying the right asserted and declining to consent to the proposed plan, since to consent would be to "concede a right in Government to come upon his private property and deal with it in any manner it might think fit, with a view to the accommodation of any individuals whom Government might deem the public." Further in reference to an observation of the Engineer, that the sanction of Government to Mr. Norton's bringing water to his grounds by the channel in question could be withdrawn at its will and pleasure, Mr. Norton takes the "liberty of questioning, as well the legality as the justice of such a step to my injury, for the sanction of Government to my taking the water has no limitation of Government's mere will and pleasure."

4. The Government will not now discuss the question whether they possess the right to carry a channel through Mr. Norton's ground without his consent, presuming that he holds under a grant or grants in the old form. Neither will they at present consider their right to the supervision and control of all the water-courses upon the hills, and of that which supplies Mr. Norton's property among the number, nor will they touch upon the opinions maintained by that gentleman in his correspondence with the Collector, nor advert to the measures to which they may be compelled to have recourse, as guardians of the public comfort and convenience, if all more moderate means should fail. Though they entertain a very decided conviction as to their own powers and privileges in the matter at issue, it

would be far more agreeable to them not to rest the determination of the question on this basis, but to effect all that is at present required by amicable arrangement. The last letter from Mr. Norton assures them that this may be accomplished as he has therein declared himself ready in a liberal spirit to enter into any arrangements and discuss the practicability of them for the accommodation of others. The Board of Revenue will therefore place themselves in direct communication with Mr. Norton and, treating the question in a conciliatory tone and in reference to its bearing on the comfort and convenience of the public, will endeavour to make due arrangements for carrying out that part of the general plan for the distribution of water in the Cantonment, which contemplates rendering the channel that passes into his grounds available for the supply of the gardens beyond it, on the understanding that this will be effected after careful survey, and with such precautions as shall ensure the continuance of a full supply of water to his own properties. If, as the Government confidently anticipate, Mr. Norton's objections be removed, the Board will then desire the Collector and Engineer to proceed with the general scheme, the expense Rs. 800 being borne by Government. If, on the other hand, the efforts of the Board should prove unavailing or any unforeseen obstacles should arise, the subject must again be brought under notice, and it will then be for Government to adopt such measures as may seem to be called for by the circumstances of the case and to be due to their own position and to the just claims of the parties interested.

5. The Government think that a water-rate would not be easy of adjustment and inasmuch as the payment must be voluntary would often be difficult of realization. It would, in their opinion, be preferable that any repairs which may from time to time be required to the channels which cannot be considerable, should be executed at the public charge. The general control over the main channels and distribution of water from them will, of course, rest with the Collector and his subordinate officers.

6. * * * * *

Copy to Board of Revenue.

II

(1)

Extract from the Proceedings of the Board of Revenue, dated 2nd August 1855, No. 1988.

READ—the following paper :—

> *Letter*—from E. B. THOMAS, Esq., Collector of Coimbatore.
> *To*—the Secretary to the Board of Revenue.
> *Dated*—the 12th July 1855.

ABSTRACT.—Requesting the instructions of the Board regarding water disputes on the Neilgherry Hills.

Mr. Thomas forwards a letter addressed to him by Mr. Courtenay, Private Secretary to the Governor-General, complaining that Mr. Davison, a houseowner at Coonoor, has diverted the course of a stream which has hitherto supplied the houses occupied by Mr. Courtenay and others with water. Accompanying Mr. Thomas' letter are statements and a plan by Mr. Davison, counter-statements by Mr. Darling and Lieutenant Lamb, and Mr. Thomas' reply to Mr. Courtenay. A separate dispute between Major Minchin and Mr. Lavcelles also forms part of the correspondence.

2. Mr. Thomas states that great inconvenience results from the want of a definite authority vested in the Collector to enforce decisions passed by him in accordance with the rules laid down in the Board's Manual * regarding tenures on the Neilgherries sanctioned and confirmed by Government in Extract Minutes Consultation, dated 19th December 1849. These rules, he observes, are clear as regards cases arising since the date of their promulgation; but as no retrospective effect has been given to them, he doubts their applicability to disputes arising on properties of longer occupation.

* C.O. page 583.

3. As regards the first case submitted by Mr. Thomas for instructions, it would seem that both the house occupied by Mr. Courtenay (which belongs to Mr. Darling) and that of Lieutenant Lamb, were in actual enjoyment of a supply of water derived from a particular channel, until Mr. Davison diverted its course. Mr. Davison claims the right of a proprietor over this stream on the ground that it rises on his land (through which also it passes). He refuses in direct terms to attend to any requisition from Mr. Thomas limiting or interfering with his alleged right. The claim which Mr. Davison founds on the locality whence the spring rises would seem from the statements of Mr. Darling and Lieutenant Lamb to be based upon an incorrect description; they declare positively (and Mr. Thomas thinks them correct) that the water is brought from a nullah beyond Mr. Davison's property. Mr. Darling also states that he himself opened the channel in question with the full consent of Mr. Davison.

4. The act of Mr. Davison seems by no means justifiable on the ground of necessity, as his premises are otherwise amply supplied with water; it is said moreover that on a former occasion he not only diverted the channel but let the water run off on to waste ground. The point for consideration, however, is whether the Collector possesses legal power to interfere in such a case and compel the party complained against to restore the stream to its former channel. Had an instance of this nature occurred in the plains, the parties being natives, the Collector would be guided by one of the three following regulations according to the nature of the case. Regulation XI of 1816, section 51, clause 3, empowers him to interfere, as a Magistrate, in cases of forcible diversion of water. Under Regulation XII of 1816 he might appoint a panchayet to decide disputed rights, and under Regulation V, 1822, he might decide the case as a summary suit.

5. Act IV of 1837 directs that all rules which prescribe the manner in which landed property may be held by natives in the company's territories shall extend to British subjects acquiring land. Should disputes arise therefore between these parties regarding forcible occupation of land or diversion of water, it would seem

that under this Act the same mode of procedure would be applicable both to Europeans and to natives. As however this construction, would bring European settlers into contact with the Magistracy in a manner which does not seem to have been directly contemplated, the Board resolve to send an extract from these proceedings to the Government Pleader, with a letter requesting him to give an opinion on the bearings of these Regulations in cases like the present.

6. Disputes regarding the distribution of water on the Neilgherries have already formed the subject of much correspondence and discussion. The Board's letter of the 3rd March 1851 (reviewed in Minutes of Consultation, June 17, 1851) contains a complete resumé of the subject. But although the propriety of empowering the Collector to decide such cases was admitted, he was instructed to effect this object by conciliatory means, and no alternative course was laid down for his guidance in the event of a refusal to submit to his decision. The Government expressly abstained from entering on the question of their ultimate powers to enforce obedience. Since that time, however, the number of these disputes and the difficulty of adjusting them has greatly increased, and the subject appears to the Board of sufficient importance to warrant their suggesting to the Government the advantage of obtaining a legal enactment to enable the Collector to enforce his decisions in these cases by a specific penalty. The opinion of the Government Pleader on existing Regulations will however be obtained before bringing the subject to the notice of Government.

7. The Government in the Minutes Consultation, 17th June above alluded to, have already declined to sanction the leavy of a water-rate on the ground that "being a voluntary payment, its collection would frequently involve difficulties." The Board, therefore, see no reason to bring this proposition again under discussion and with reference to the suggestions contained in paragraph 17 of the Collector's letter, they consider that the mode and particulars of adjustment when streams are divided may be best determined by the local officer and the parties concerned, and that no general rule can be insisted on. Should it be decided to invest the Collector with further powers as described above, it will be unnecessary, the Board consider, to associate any other officer with him in his judgments.

8. The opinion of the Government Pleader will be communicated to Mr. Thomas in due course for his guidance in disposing of the complaints preferred by Mr. Courtenay and by Major Minchin.

To E. B. Thomas, Esq., Collector of Coimbatore.

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(2)

Letter—from G. S. Forbes, Esq., Acting Secretary to the Board of Revenue, Fort St. George
To—J. B. Norton, Esq., Government Pleader, Madras.
Dated—6th August 1855.
No.—1989.

I am directed by the Board of Revenue to forward, for your consideration, Extract from their Proceedings, dated 2nd August 1855, and with reference to the case therein described, to request that you will favour them with your opinion as to the applicability of Regulation XI, 1816, section LI, clause 3, Regulation XII, 1816, and Regulation V, 1822, construed under Act IV, 1837, to water disputes arising between European settlers on the Neilgherry Hills or between these parties and native landholders.

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(3)

Letter—from J. B. Norton, Esq., Government Pleader, Madras.
To—G. S. Forbes, Esq., Acting Secretary to the Board of Revenue.
Dated—9th August 1855.

I have the honour to acknowledge the receipt of your letter of the 6th instant together with its enclosures.

2. I am of opinion, with reference to the particular case now under consideration, that the Collector has no power to interfere, if, as I presume is the case, Mr. Davison has not acquired his property subsequent to Act IV of 1837.

3. That Act extends only to persons who shall "under the authority of this Act acquire or hold property."

4. If Mr. Davison was a squatter on the hills before this Act, and has not since applied for a pattah to Government, I conceive that he cannot be considered as falling under it. His title may be a very defective one; but that is not the point at issue. The Legislature appears to me to have overlooked such cases as the present and it is simply a *casus omissus.*

5. I have no doubt that Europeans falling under this Act are amenable precisely as natives to all the rules which regulate their tenure of land.

6. In the present case, however, even supposing that Mr. Davison were amenable to the Collector's jurisdiction, I am of opinion that Regulation XI of 1816, section 51, would be altogether inapplicable as that only empowers the Magistrate to *prevent* forcible occupation, or to act "when riotous assemblages are formed" clearly pointing out that it was enacted for prevention of breaches of the peace, not for remedying usurpations already complete.

7. *Regulation XII of* 1816, I conceive it would not be an expedient to have recourse to when both or even one of the disputants was a European, as it would scarcely be fitting to refer a European to the decision of a native panchayat. Regulation V of 1822, if applied, would, in my opinion, in such a case only lead to extended litigation, since the summary decision of the Collector would in all cases be probably appealed against by the unsuccessful party.

8. In the case under consideration, although the Collector cannot interfere, the party injured has his remedy by appealing to the ordinary civil tribunal in the first instance. Mr. Davison's Act is altogether illegal and indefensible. He is entirely mistaken in his view of the law if he supposes that it confers upon him any right to divert a water-course running to lands below his own either because the stream passes through or rises in his own land, and as these matters are, I believe, undergoing reconsideration at the present time, I would respectfully call the attention of the Revenue Board to the desirability of such disputes as the present being left to the Judge who will henceforth, I understand, be stationed on the Hills in preference to the delay and harassment of parties residing on the hills being compelled to have recourse to the authorities residing at Coimbatore.

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(4)

Letter—from G. S. Forbes, Esq., Acting Secretary to the Board of Revenue.
To—J. D. Bourdillon, Esq., Secretary to Government, Revenue Department.
Dated—Fort St. George, 17th August 1855.
No.—2134.

From Coimbatore, 12th July 1855.
To Government Pleader, 6th August 1855.
From Government Pleader, 9th August 1855.
* Dated 2nd August 1855.

I am directed by the Board of Revenue to submit, for the information of the Governor in Council, the correspondence noted in the margin, together with the Board's Proceedings * on the letter from the Collector of Coimbatore.

2. On the 6th of August the Board forwarded a copy of their Proceedings to the Government Pleader, requesting his opinion as to the bearing of Regulations XI and XII of 1816 under the application given to them by Act IV of 1837 on the case submitted by Mr. Thomas.

3. Mr. Norton gives it as his opinion that Act IV of 1837 renders all Europeans acquiring land in the Company's territories subsequent to that date, amenable precisely as natives, to the Regulations which concern the tenure of land; he considers however that the Collector has no power to interfere in the present

case either under Regulation XI or Regulation XII of 1816, and that his doing so under Regulation V of 1822 would be very unadvisable.

4. Mr. Norton further says that the act of Mr. Davison is altogether illegal and indefensible, and that the party injured has his remedy in the ordinary civil tribunal; he suggests that the establishment of the proposed Court on the Neilgherry Hills offers the best means for the disposal of these cases.

5. It appears to the Board that clause 2, section XV, Regulation V of 1822, under the application which Mr. Norton considers to have been given to all Regulations regarding land by Act IV of 1837, would empower the Collector to refer this dispute to a panchayat if the parties agree to such a course, and that such a panchayat might, without departure from the tenor of the regulation, consist of Europeans.

6. As this course however is contingent on the consent of the parties, it offers but an uncertain remedy; and it appears clear to the Board that neither existing regulations nor the rules sanctioned by Government for regulating tenures on the Neilgherry Hills are sufficient in their present form for the adjustment of these disputes.

7. The Board would therefore submit, for the consideration of Government, the adoption of one or other of the courses which have been pointed out—either to procure, as Mr. Thomas suggests, a legal enactment to render the Manual effectual, or to refer these cases, as Mr. Norton suggests, to be settled by the Civil Court.

8. I am desired, at the same time, to state that the former course, as ensuring a more summary disposal and being in keeping with the intentions already expressed by Government in promulgating the Manual of 1850, appears to the Board the more complete and efficient remedy; but it is possible that if an action for damages was brought at the public expense against one of the parties for trespassing on the rights of the public, others would be deterred from similar conduct.

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(5)

Extract from the Minutes of Consultation under date the 28th August 1855, No. 987.

READ—letter from the Secretary to the Board of Revenue, dated 17th August 1855, No. 2134.

With this letter the Board submit one from the Collector of Coimbatore under date July 12th and its enclosures, respecting disputes about the right to water on the Neilgherry Hills, and in particular, respecting a dispute of that character between Mr. Courtenay and Mr. Davison. They submit also their own order thereon, and the opinion of the Government Pleader on a point of law referred to him in connection with the subject. The Board recommend that either an Act should be obtained to give legal force to the "Manual of Instructions for Revenue officers of Coimbatore, etc.," passed by Government on the 19th December 1849, or that these cases should be referred to be settled by the Civil Court.

2. Under the opinion given by Mr. Norton, the parties aggrieved in the case in question already have and always have had a remedy at hand, and as they have not had recourse to that remedy it must be supposed either that they are ignorant of the fact, which implies that they have not taken the trouble to seek competent legal advice, or that they have been deterred from seeking redress by the distance of the Court and the tediousness of the proceeding. There being already a sufficient legal remedy available, the Government deem it inexpedient to give the Collector power to decide such disputes; and this more especially as there will so soon be a Court established at Ootacamund, peculiarly qualified to deal with such cases. Adverting to the closing passage of the Board's letter, the Government observe that no necessity appears for an action at the public cost to redress a private wrong.

3. The foregoing remarks apply to disputes between individuals respecting rights as they exist; but the Board raise a prior question, viz., whether the Government may not properly obtain power to set aside existing rights, where occasion may appear, and make a redistribution of all the water on the hills, as well as to control and regulate all future appropriations.* The Government are not prepared at present to enter on that question which would need to be handled with much caution, to avoid both the doing injustice to existing proprietors, and the deterring settlers from resorting to the hills. They resolve, however, to authorize the Board to consider and report, in communication with the Government Pleader, how far legislation on the subject may be necessary and expedient, and if necessary and expedient, what should be its scope and limit.

* See Rule XV of the Manual.

4. The Government resolve also to communicate to the Board of Revenue, for their information, the correspondence which has passed between themselves and Mr. Courtenay on the subject of his dispute with Mr. Davison.

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(6)

Extract from the Proceedings of the Board of Revenue, dated 3rd November 1855.

Read—again Extract Minutes Consultation, dated 28th August 1855.

The Board resolve to forward to the Government Pleader a copy of paragraphs 1 to 3 of the foregoing Extract Minutes Consultation, with a request that he will favour them with his opinion regarding the expediency of legislating for the settlement of water disputes occurring on the Neilgherry Hills and as to the scope which would be proper to a law having this object.

To J. B. Norton, Esq., Government Pleader.

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(7)

Letter—from J. B. Norton, Esq., Government Pleader.
To—G. S. Forbes, Esq., Acting Secretary to the Board of Revenue.
Dated—13th November 1855.

I have the honour to acknowledge the receipt of No. 2928, Extract of Proceedings of Board of Revenue, under date 3rd November 1855, together with the copy of paragraphs of Minutes of Consultation of Government therein referred to.

2. I observe that the question referred to me by the Board is somewhat wider than that left to it by the Minutes of Consultation to take my opinion upon; since the terms of the Board's Proceedings would seem to include in the point referred to me the expediency of legislating for any disputes concerning water arising on the Neilgherry Hills; whereas, if I read the Minutes of Consultation aright the Government has already decided that disputes between private individuals are to be left to the adjudication of the ordinary civil tribunals; while the only matter on which the Board was instructed to seek my advice was the expediency of legislating with a view to vesting in Government the proprietary right of all water with a view to redistribution as commented on in paragraph 3 of the Minutes of Consultation.

3. I adhere to my former opinion with respect to the course for private individuals; I am fortified in that opinion by the fact that there is now constituted on the hills themselves a court excellently qualified for bringing such disputes to a speedy and satisfactory conclusion.

4. Upon the best consideration I can give the other matter, I confess that it appears to me surrounded with difficulties; and I cannot think that it is either expedient or necessary to legislate upon it at all.

5. With respect to all streams not yet occupied but which it is probable will hereafter become so, from the spread of cultivation, or the increase of population on the hills, it appears to me that Government in which unquestionably resides the proprietary right to such streams, etc., is perfectly able, as matters stand, to protect its own rights and preserve them intact without any legislative enactment on the subject.

6. An adherence to rule XV of the Manual of Instructions for the Revenue officer in charge of the Neilgherry Hills will preserve to Government the dominion over all streams, etc., in future, and it might be desirable that any future leases to be granted should recite the fact that the tenant holds under Act IV of 1837, whereby all the rules regulating the landed property of natives will at once become applicable to such tenant and his holding.

7. But for the Government to seek now to establish an exclusive right to all waters however long occupied, to "set aside existing rights" and to make a "redistribution of all the water on the hills" would be simply to plunge into an endless multiplicity of disputes, and possibly litigation without, so far as I can discover, any compensating advantage to be gained either by the Government or its subjects.

8. By this time the rights of individuals must be pretty well ascertained and self-adjusted; where disputes arise a Court is ready at hand to settle them; and I am quite at a loss to understand on what principle Government could proceed to a "redistribution" more defined than the "equity and good conscience" recommended repeatedly in the Regulations; or why any such redistribution is necessary.

9. Entertaining these views, it becomes unnecessary for me to enter upon the "scope and limits" of any enactment; but if any such should be deemed expedient, I confess I should be at a loss to know how to draft it. It would, I suppose, consist, first, of an arbitrary declaration that all existing rights, whether obtained by long possession or otherwise, were abrogated, and the property, both the "dominium utile" and the "dominium direction" in all water vested in the Government, and the "redistribution" clauses might either consist of a series of minute though vexatious powers of inquiry, entry, measurement and the like for the purpose of ascertaining how much or how little water would suit the convenience or meet the wants of individuals; or of a sweeping declaration that it should be the duty of Government to redistribute, according to "equity" and good conscience. But it appears to me that with a professional Judge on the hills, the most minute details would probably be found necessary in order to save the Government officers from action of trespass and the like for acts done in pursuance of any mere general authority to redistribute.

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(8)

Extract from the Proceedings of the Board of Revenue, dated 19th April 1856, No. 1176.

In Ex. Mins. of Cons., 28th August 1855, paragraph 3, the Board were directed to consult the Government Pleader on the subject of obtaining a new Legislative enactment, to give the officers of Government a control over streams on the Neilgherry Hills and enable them to make a distribution of the water in case of disputes. Government issued these instructions in consequence of the Board having observed when reporting on the difficulty of settling these disputes, that it seemed advisable either to invest the Collector with legal authority to give effect to the Manual or else to leave all disputed claims to be settled by the Civil Courts.

2. The Board accordingly addressed the Government Pleader, and now lay before Government his reply.

3. Mr. Norton is averse to further legislation, and expresses himself at a loss how to draw up any enactment to affect streams or water privileges on lands already under occupancy which would not be open to grave objections. Any disputes which now arise regarding such lands should, Mr. Norton thinks, be left to the local Civil Court; and he suggests that in all future leases a clause should be entered "to recite the fact that the tenant holds under Act IV of 1837, whereby all the rules regulating the landed property of natives will at once become applicable to such tenant and his holding." This course and an adherence to Rule XV of the Manual of Instruction, will, in Mr. Norton's opinion, secure to Government sufficient control over all streams in future.

4. The Board propose to direct the Collector of Coimbatore, when granting future leases, to act on Mr. Norton's suggestion, which would be useful in taking away from the leaseholder any plea of ignorance as to his being subject to the general rules and regulations regarding land. But the question still remains, what authority has the Collector to interfere when encroachments are made on the rights reserved to Government by Rule XV of the Manual. In his former letter of 9th August 1855, Mr. Norton had objected to the Collector attempting to settle water disputes in which one or both of the parties concerned were Europeans, either under Regulation XII of 1816 or Regulation V of 1822. No course seems therefore left to the Collector but to institute a suit on behalf of Government in the Civil Court against the encroaching party; and the Board recommended in their Acting Secretary's letter of the 17th August last that this course should be tried; but Government did not give its consent to the measure.

5. Such is the position in which the question now stands. As the Regulations affecting land were under consideration with a view to their being revised and framed into a Code, the Board deemed it advisable to ascertain the views of the officer selected for that duty before laying the papers before Government, as a clear and general law was wanted, and not any special legislation for the Neilgherry Hills. They now find that the enactments * proposed by Mr. Stokes, in supersession of Regulation XII of 1816 and V of 1822, appear framed for the purpose of giving Collectors summary power when their interference is required in disputed claims to water and land. When there is no urgent necessity for those officers to act, it will be at their discretion to refer the disputing parties to the Civil Courts, and the Board conceive that this arrangement will place the law on its proper footing.

* See sections 27 to 31 of a draft Act for regulating the powers and duties of Revenue officers sent to Government with Mr. Stokes' Third Report, dated 1st December 1855.

6. The wording and scope of this part of Mr. Stokes' drafts Act will be noticed by the Board in the review of his Code.

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(9)

Order thereon, No. 474, dated 8th May 1856.

In their order of August 28th, 1855, No. 987, Government declared their opinion that legislation respecting the rights of private parties in running water on the Neilgherry Hills was unnecessary, inasmuch as a proper legal remedy for infringement of such rights is already available. They, at the same time, expressed unwillingness to enter on the question of legislation in view to a redistribution of existing rights; but authorized the Board to confer with the Government Pleader on the subject. That gentleman's letter now submitted forcibly represents the difficulties of the subject; and the Government are confirmed in the opinion that legislation upon it is unnecessary and inexpedient.

2. The Government approve the addition to future leases suggested by Mr. Norton, as recited in paragraph 3 of the Board's Proceedings; but on the distinct understanding that the absence of the new clause in leases now existing is not by any means to be held to exempt the holders from the operation of Act IV of 1837.

3. Adverting to the closing part of the Board's fourth paragraph, the Governor in Council observes that he is far from being averse to an action being brought, when occasion may occur, to maintain the rights of Government. That which was objected to in the order of August 28th, was to bring an action at the public cost to defend private rights; this was what the Board were understood to propose, though erroneously as it afterwards appeared.* It does not appear to Government that the disputes alluded to by the Board in this paragraph are touched either by Regulations XII of 1816 and V of 1822, or by Mr. Stokes' proposed law in his draft Act No. III, section XXVII. All these enactments seem to apply only to the case of disputes between private parties; whereas the Board appear to contemplate that of an individual taking unoccupied water without permission of the authorities. In their Proceedings of the 11th September 1855 already adverted to, the Board seem to propose (paragraph 3) that Government should in such a case sue the trespasser, on the ground that he infringes the right of the public, viz., of possible future settlers who will thus be deprived of the water. The Governor in Council does not see how such an action would lie; but he would wish the Board to consult the Government Pleader on the subject. It would also be well to take Mr. Norton's opinion on the general question what is the proper means of maintaining and enforcing the control of Government over springs and running water on the Neilgherries, reserved by rule 15 of the Manual, and which reservation is recommended by him to be inserted as a safeguard in future leases.

* Extract Proceedings, Board of Revenue, dated 11th September 1855.

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(10)

Letter—from G. S. Forbes, Esq., Secretary to the Board of Revenue.
To—the Government Pleader.
Dated—11th June 1856.
No.—1751.

No. 1176, Board's Proceedings, 19th Apr. 1856.
E.M.C., 8th May, No. 474.

I am directed by the Board of Revenue to refer, for your consideration, the correspondence noted in the margin; you will observe that the Board are requested to ask your opinion on the course to be adopted in order to "maintain and enforce the control of Government over springs and running water on the Neilgherries reserved by rule 15 of the Manual." The Board would also wish to know whether an action might be maintained on behalf of Government against any individual possessing himself of water not already appropriated.

2. The correspondence which exists on this subject has been lately before you, but as you may desire again to refer to it I have directed it to be separately put up.

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(11)

From—J. B. Norton, Esq., Government Pleader.
To—the Secretary to the Board of Revenue.
Dated—14th June 1856.

I have the honour to acknowledge the receipt of your letter, No. 1781, under date 11th June 1856, together with its enclosure herewith returned.

2. "The proper means of maintaining and enforcing the control of Govern-"ment over springs and running water in the Neilgherries reserved by rule 15 of the Manual" consists, in my opinion, in the Collector, in every instance of granting land, carefully defining what rights the tenant is to exercise over the water, and having the spring and, more especially, the stream carefully surveyed and mapped at the time of the grant so as to show any work which the Government may permit the tenant to have erected for the purpose of using the water; care being taken that no such works shall be allowed as will interfere with the use of future proprietors lower down the same stream, unless indeed Government in any particular instance is disposed to allow the individual or a company to have the entire use of such water, when it should be so specified, in order to prevent disputes or claims arising on the part of any parties who may at any future time settle lower down.

3. This being carefully observed in each instance, any attempt by the tenant to encroach upon the rights reserved by Government, as for instance by the erection of dams or other works to divert more water than he has been granted (which is a substantive injury to Government) will be easily detected and the evidence of it forthcoming. It is to be dealt with as an injury to Government; not out of respect to the possible rights of an imaginary future public.

4. Of course the same observations apply to any mere wrong-doer who usurps unoccupied water without any grant from Government. The method by which such injurious acts are to be redressed, and the control of Government over its springs and streams enforced, appears to me, as the law at present stands, to be by action in the Civil Courts against the trespasser.

5. Regulations XII of 1816 and V of 1822 provide only for differences between private individuals, not between Government and a private individual. On principle I think it very undesirable that Government should seek by special tribunals or other devices to withdraw the adjudication of its claims from the ordinary Courts of the land. If the Collector is to decide in a dispute between the Government and its subject, Government is in point of fact both judge and suitor; and therefore I think the proper means for Government to maintain its rights is by proving them before the ordinary judicial tribunals.

6. At the same time it may be highly desirable to avoid the expense and delay of an action, and to institute speedy means of redressing injuries of the nature under discussion. This may be effected by the Act (which I am at present engaged in drawing), giving the Magistrate power to interfere summarily, treating the works as of a criminal and public nature.

7. I would, in conclusion, remark that the officers of Government should in all cases be careful and prompt to note any unauthorized encroachments. By sleeping on rights and permitting parties wrongfully to enjoy water, a specious claim of right springs up; stronger in proportion to the length of permissive enjoyment, which may ripen into a good title, and which is likely to be more troublesome the older it grows.

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(12)

Letter—from G. S. Forbes, Esq., Secretary to the Board of Revenue.
To—J. D. Bourdillon, Esq., Secretary to Government, Revenue Department.
Dated—Fort St. George, the 27th June 1856.
No.—1963.

I am directed by the Board of Revenue to state that, in conformity with the instructions of Government contained in Extract Minutes Consultation, dated 8th May 1856, No. 474, they requested the opinion of the Government Pleader Sudder Udalut on the course to be adopted in order to maintain and enforce the control of Government over springs and running water on the Neilgherries reserved by rule 15 of the Manual; the Board also wished to know whether an action might be maintained on behalf of Government against any individual possessing himself of water not already appropriated.

2. The reply, dated 14th, from Mr. Norton is herewith submitted for the information of the Right Honourable the Governor in Council.

3. Mr. Norton is of opinion, it will be seen, that where it is proposed to restrict the use of water, the Collector should, in each instance of granting land, carefully define what rights the tenant is to exercise over the water; and have the spring, and more especially the stream, surveyed and mapped, so as to show any work which the tenant may be permitted to erect, care being taken that no such works shall be allowed as will interfere with the use of future proprietors lower down the same stream.

4. If this plan is adopted, Mr. Norton thinks that any encroachment may be easily detected and dealt with by a Court of Law; but as expense and delay would be caused by litigation, he proposes a speedy means of redressing such injuries; viz., by giving the Magistrate power to interfere summarily, and which can be done in the Act he is now drawing up.

5. Mr. Norton's advice may, therefore, be summed up in a few words; first that all works affecting the flow of water which a lessee shall be permitted to erect, should be exhibited on a map before the grant of the land; and, secondly, that summary powers be given to the Magistrate to prevent all encroachments upon reserved rights.

6. The suggestions of Mr. Norton can, of course, be followed in all future grants of lands, and the Board think that he should be instructed to introduce clauses in the new Act, he is now drafting for the protection of public works, giving the Magistrate the necessary summary powers to interfere in cases of encroachment.

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(13)

Order thereon—No. 772, dated 26th July 1856.

In accordance with the wish of Government, as expressed in paragraph 3 of Extract Minutes Consultation, May 8th, 1856, No. 474, the Board of Revenue sought the opinion of the Government Pleader as to the course to be taken in order to maintain the control of Government over springs and running water on the Neilgherries, reserved by Rule 15 of the Manual; and they also enquired whether an action would lie against an individual possessing himself of water not already appropriated.

2. As to the first question, Mr. Norton is of opinion that in making grants of land on the Neilgherries, springs and streams of water on the land should be accurately mapped and defined, as well as all works which the tenant shall then be permitted to erect on them; and that the rights to be exercised over the water should be accurately defined. Any infringement of these terms may be made matter of a civil action, whether such infringement in fact injures any other party or not; and the same remedy would lie against a party usurping unoccupied water without any grant at all. For the more expeditious redressing of such wrongs however, Mr. Norton is of opinion that power should be given to the Magistrate to interfere summarily, treating such acts as of a criminal and public nature. Section I of the draft Act for the protection of public and private works of irrigation, etc., prepared by the Government Pleader and now before Government, is so worded as to give such power to the Magistrate, and no special enactment is necessary.

3. The Government resolve to request the Board of Revenue to communicate the correspondence that has passed on the subject to the Collector of Coimbatore, as well as to the Collectors of other districts where similar cases may be likely to occur, and to call the particular attention of those officers to the course pointed out by Mr. Norton, as respects both the points to be defined in future grants or leases, and as to the remedy in case of the infraction of such stipulations. It occurs to Government that it might also be useful to obtain from the Government Pleader,

and furnish to the collectors, a form of lease to be used in cases of this nature, with such modifications, as to the particulars of works and other details, as circumstances may require in each case.

4. Mr. Norton's suggestions relate primarily and chiefly to lands to be hereafter granted out. But they are also applicable in part to those already granted or in occupation. Encroachment or other wrong of the nature in question, on or in connection with such land, may be redressed or punished by the same means; it is equally liable to civil action now, and will be equally liable to criminal complaint before the Magistrate under the proposed Act. The only difference is that in the absence of an accurate definition of rights proof of the wrong will be less easy; but it will not by any means be impossible, because custom and reason will be accepted as proof. This circumstance should be pointed out to Collectors; and they should be reminded that the want of maps and definitions is not to be understood to give impunity in wrong to present occupiers.

J. D. Bourdillon,
Secretary to Government.

III

(1)

Letter—from Colonel C. E. Faber, Chief Engineer.
To—the Secretary to Government, Public Works Department.
Dated—the 23rd October 1855.
No.—2017.

The subject of the conservation of the Hydraulic works of this Presidency has long occupied my own attention and that of several other Officers of Government in the Revenue and Engineer departments; and I now feel that it should be taken up, and disposed of upon comprehensive principles, and with a care and vigor proportionate to the general high efficiency expected from the approaching new organization of the department of Public Works.

2. According to the uniform experience of the Officers of the department of Public Works, the mischief and loss caused to works of irrigation, by the acts of interested or negligent persons, under no adequate restraint of law, are very much more considerable than is generally believed; and these are found to have often nullified the remedial measures applied from time to time, and at great expense by the state. This will be the more apparent as a fact, when it is considered how accurate and perfect *ought* to be the control over bodies of water flowing in channels, or stored in reservoirs, in order to utilize them in the highest degree, and yet without allowing any scope for their vast *destructive* power. This species of control can be effectual only, when unopposed by other than natural agencies; and it will, and only too oft does, prove entirely nugatory against what in themselves may appear trivial acts of interference; whether such be the result of negligence, of self interest, or of ill will.

3. Mr. Kindersley, the former able Collector of Tanjore, than whom no one was more conversant with the character and incidents of the Delta rivers and their liability to be acted upon by different, and apparently trivial causes, remarked, when reporting upon the Coleroon anicuts, that the unchecked growth of a few seeds of Durbah grass, in a particular part of a river bed, would often quickly form an island, that would materially and injuriously affect the course of the stream and interests of the people and Government; and would create difficulties, only to be overcome by large expenditures, directed by the very highest professional science and skill!! If, then, this experienced fiscal officer could correctly assign such consequences to the accidental germination of an acquatic plant, how much more injurious must be the interference with river courses, of a very *numerous body of* owners and occupiers of land, pursuing with design and practised knowledge, their own interests, and disregarding all other considerations? Major Lawford, after some years of service in Tanjore and Trichinopoly, was strongly persuaded of the prevailing and continued evil effects of such unchecked proceedings; and no less fully convinced of the inutility of any hindrance, or penalty, provided by the existing Regulations or Agencies.

4. In the report of the Board of Revenue in the department of Public Works, upon the proposition for a complete establishment for the custody and conservancy of the Hydraulic works of the Godavery Delta, the state of things in Tanjore was specially noticed; and the danger was forcibly urged of allowing the same to grow up in Rajahmundry. The Government accordingly, and with much obvious benefit, procured sanction for a liberal establishment for the Godavery works; and it has recently signified its opinion that the Hydraulic works of the Kistnah Delta should be subjected to a similar system of control and conservancy. But the necessary, if not indeed the *natural*, complement of such measures, appears to me, to be *a law* for the prevention and punishment of private acts, which may in themselves be necessarily adverse to the effective operations of the Officers of Government. The Civil Engineers of the Godavery and Kistnah divisions report that they feel the necessity of a law of this kind, for the support of the Delta establishments; and yet it appears to be far more indispensable in the older districts, where the Revenue officers alone exercise any control over the works. Such control will,

it is intended, be gradually withdrawn from the Revenue department by the professional Agency of the new department of Public Works; but it is clear, that whether the transfer take place sooner or later, it will impose on the Engineer department a severe task, proportionate to the multiplicity of private interest, and consequently of acts of interference with which they will have to deal. I anticipate indeed difficulties of equal magnitude under the new system, whether in its imperfect or in its mature state, unless there be passed a preventive and final Act to strengthen the hands of all the Officers and Agents, whose duty it will be to keep the works in repair even if they should not, for some time yet, be entrusted with their actual *custody*. For it cannot be doubted that while the control of the Revenue Officers does continue, it will practically be greatly relaxed by reason of the cessation of their own executive functions; and it will seldom moreover be willingly exercised; so that when the custody and control of the works shall also cease, the executive Officers will inherit all the difficulties arising from defective law, without any portion of the influence enjoyed, and the power also possessed, by their predecessors of the Revenue department.

5. For these and very many other reasons it might be deemed tedious to enumerate, I beg to recommend the accompanying Draft Act for consideration, and submission, after the requisite legal revision, to the Government of India. It was originally prepared by the Collector of Tanjore, who has thus afforded proof both of his interest in the settlement of the question and of his conviction of its necessity; and it has only received some very slight modification in my office. It will be seen that the Draft contemplates the fencing or hedging of channel banks, a measure which I hope to see generally introduced; as otherwise, it would be probably impracticable to check by penalties the straying of cattle, and the injuries thereby caused.

6. Should the proposed Act be approved and passed, I anticipate the greatest benefit from its judicious application. It will, I believe, be chiefly *preventive* in its operation; and will thus create a general respect for the public good, as of far more importance in the eyes of an enlightened Government, than any private interests. The success that has attended the Act for appropriating lands required for public purpose, emboldens me to look for a similar species of success in the measure I now advocate. Seldom, as I have been given to understand, has it proved necessary to use the coercive provisions of that Act; but the knowledge of their existence has been sufficient in most cases, to induce the surrender of property for a reasonable compensation; and in like manner, I trust that the proposed Act for the conservation of Hydraulic works will place a salutary restraint upon the negligence, selfishness, and the evil designs from which they at present so extensively suffer; and thus, that the cases calling for the actual infliction of penalties, will be comparatively very few.

7. With these observations, I submit the Act for the favourable consideration and support of the Right Honorable the Governor in Council who will, I trust, be pleased either to recommend the actual adoption of the present instrument, as a Legislative enactment of the Government of India; or will direct the Law Officers of Government to make its provisions the ground work of a more comprehensive and better considered series of measures, comprising reservoirs, or tanks as well as rivers and channels, which are more specially provided for in Mr. Forbes's Draft Act, as revised by Captains Rundall and Orr.

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(2)

Order—No. 747, Public Works, dated 21st May 1856.

1. With this letter the Chief Engineer submits draft of an Act, drawn up by Mr. Forbes, Collector of Tanjore, and slightly modified in his own office, for the preservation of works of irrigation, navigation, and drainage. He represents the fact that such works are now exposed to injury, either through neglect, malice, or

motives of self-interest, without liability to penal consequences. He notices the moral effect which he believes to have attended the mere existence of Act XX of 1852, in the facility it affords to the acquiring of land for public purposes, and argues that in like manner a salutary restraint will be imposed on persons of negligent habits or actuated by evil design, from the fear of subjecting themselves to the penalties which a violation of an express statute would draw on them, and that thus the actual infliction of those penalties will be very rare.

2. There can be no doubt as to the great necessity of a law for the regulation and protection of works of the kind referred to. The whole subject compreheuds several branches, of which that taken up in the Draft Act now submitted is one, viz., the punishment of injury to and trespass on channels and their banks and the works connected with them. It appears to Government that the general provisions of this Draft would answer for this part of the subject; but they think that it may be abridged and expressed in simpler language, using general terms instead of attempting to define all particulars. It requires also, as Colonel Faber notices, to be enlarged in its terms, so as to include tanks and all their connected works.

3. The penal parts also require to be amended. It seems desirable to give some power of punishment under this Act to heads of Police in petty cases; as this will operate both to make enquiry and decision prompt, and also to prevent parties being taken far from their homes on trifling charges. It appears to Government that heads of Police may safely have the same extent of power in cases of this nature, as they have or may hereafter have in cases of assaults and affrays, and the Government are also of opinion that instead of enacting new penalties and powers of punishment, the best course will be to declare those already existing applicable to the new offences. It might be enacted simply that the offences named in this Act shall be punishable by the heads of Police (Tahsildars) to the extent of their power, for the time being, in punishing assaults; and more serious cases by Magistrates and their assistants, to the extent of their general power under Section XXXII, Regulation IX of 1816, and Section LIV, Act VII of 1843. The proceedings both of heads of Police and of Magistrates under this Act, to be subject to the same supervision and appeal as under other laws. Section V of the Draft should also be omitted, and offences under this Act be left to be proved according to the ordinary rules of evidence.

4. The Governor in Council is further of opinion that as regards the offences enumerated both in Section I and Section II of the Draft, provision should be made for levying from the offender, in addition to the penalty, a sum sufficient to repair the damage done in the first case, and to remove the obstruction in the second; and also to repair any injury to the bed or banks of the river or canal, which such obstruction may have caused. And here it seems to Government that it will not be unjust to provide that if the actual offender cannot be found, or if he be too poor to make good the damage done, then the means of doing this may be recovered from the village community, or from the proprietor of the land in fact benefiting by the Act. A precedent for this course exists in Act XX of 1855 for the establishment and maintenance of the boundary marks in this Presidency; in which it is provided (Section V) that where the perpetrator of wilful injury to such marks cannot be found, the cost of restoration or repair may be levied on the owners or occupiers of the adjacent lands, or on the village community.

5. Another branch of the subject is wilful waste and fraudulent appropriation of water. This is a source of enormous loss to the State, and it is owing to several causes. First; from the extreme fewness of Engineers hitherto, none or scarcely any of the Government channels or tanks are provided with really efficient outlets, or with such as afford the means of regulating the supply. They are generally vastly larger than necessary, and thus the easy means of waste are placed in the hands of the ryots; and these are freely used, both from reckless neglect, and in order to injure other ryots further down the channel. Second; from the same cause, viz., the paucity of Engineers and other guardians of works, there has been no agency at hand to detect and bring to light those delinquencies. Here and there a flagrant case is indeed brought to notice, like that of the Calingaroyen channel in Coimbatore by Colonel F. C. Cotton in 1850; but that is only a passing

notice, for the Officer's attention is called away by his numerous other duties, and there is no established agency on the spot to guard systematically against these offences. The establishments indeed are gradually becoming stronger and better able to attend to this duty; but every considerable work ought to have a special protective agency, which may be little expensive in itself, but which, acting under responsible Officers never very distant, will be efficient for its object. Third; is the want of a sufficient law for punishing these offences. The creation of an efficient Irrigation Police, so to call it, will speedily bring this want into prominent notice; it has already done so in the Godavery Division, and will do so everywhere. It will also open the way for gradually providing all channels with proper works of outlet. It is the third of the disabling causes above enumerated which is now to be considered, viz., the enactment of a law for punishing the stealing or wasting of water. On this subject, and indeed on that of injury to the works also, there is much that seems very appropriate in the Italian laws as given by Captain Baird Smith*; for example the extracts given by him from the Sardinian Code at pages 316 to 318 of Vol. II, and the regulations of the Royal Canals, pages 307 &c. At page 305 also, there are some very appropriate rules, which are even now generally recognized in this country though not positive law, prohibiting the alteration of dams, &c.

* "Italian Irrigation."

6. Act VII of 1845 contains the legislation for the canals of North India. Section II enables the Lieutenant Governor to make rules for regulating the irrigation and navigation of the canals; and the rules made accordingly, impose a very light penalty † for stealing or wasting water; viz., for stealing double the value of the water so stolen, *i.e.*, proved to have been stolen; and for wasting, a penalty not exceeding the highest water rate for the land flooded. Such a rule in this Presidency would not only be inadequate, but its very form would be unsuitable. Section V of the Act provides for the punishment of wilful obstruction to canals, or injury to their banks. This Section is far more concise than the Draft submitted by the Chief Engineer, and in the opinion of Government would meet the case equally well.

† *Vide* VII and IX of the rules giving effect to Act VII of 1845, page 339 of Vol. II, Baird Smith's Italian Irrigation.

Page 335, *ibid.*

7. There is another subject which ought certainly to be provided for in the proposed Act, viz., the regulation of the demand for unpaid labor in certain cases. Forced labor for the execution of Government work will, it is hoped, no longer exist; but in every part of the country there are operations in connection with irrigation and cultivation, which are by custom performed by the village communities concerned, under certain rules; and without the performance of which, the cultivation of the village or set of villages depending on the tank or channel, is impeded or prevented. Generally the influence of the village authorities or of the whole village body is sufficient to get the work done; but occasionally some troublesome and obstinate individual refuses to give his labor and as the others will not work for him, the work is not done, and all are losers as well as the Government. Again, in cases of emergency, such as the breach of a tank, or of a river or channel bank, it is right and necessary for the common good, that there should be power to press labor to repair the damage. In such cases too, the parties liable usually submit to the demand; but occasionally they resist.

8. It is highly desirable therefore that there should be a law passed, defining in general terms the liability to furnish labor in both the cases above described, and providing penalties for refusal. With such a law in existence, men called upon to give assistance in such cases would not be likely to be refractory, knowing the demand on them to be lawful, and capable of legal enforcement; but in cases of refusal, there would be no occasion to resort to coercion, as the remedy would be simply to take means afterwards to levy the prescribed penalty. This should be heaviest in the latter of the two cases above stated; and in respect to labor of that nature, it should also be provided that parties called on to work should be paid, and at liberal rates; and that those required to work at night should receive

double pay. If it is a Government work, payment for the labor will of course be made from the public Treasury; if it belongs to a private party, wholly or partly, provision should be made for levying the amount from him.

9. The Act should set out with a declaration of what is certainly the Common law of this country; viz., that rivers and natural streams, as well as springs in unoccupied or Government land, belong to Government. This is maintained and made matter of enactment in the laws of Piedmont and Lombardy as given by Captain B. Smith. Proprietors of land are entitled in those States to the water of springs coming to the surface within their estates (subject to the prescriptive rights of proprietors lower down), and also to all water that they may obtain from below the surface; but no one has a right to take water from a river or torrent flowing by or through his land, without a grant from the Crown. The power of Government to construct works of irrigation, and to levy a reasonable tax for the use of the water, might also be declared.

Italian Irrigation, Vol. II, pages 249 and 253.
Pages 255 and 256, *ibid.*

10. With these remarks, the Government resolve to transmit the papers to the Government Pleader, with the request that he will prepare a Draft of an Act embodying the general provisions above stated. The main objects of the enactment should be the following:—

1st—To punish injury to the works, whether done wilfully or caused by culpable negligence; and in certain cases, to recover the means of compensating and repairing the damage.

2nd—To punish the wasting or stealing of water.

3rd—To regulate and legalize compulsory labor in two cases.

1st—That of certain works immediately connected with agriculture, which by the custom of the country, are performed jointly by the general body of ryots of one or more villages.

2nd—That of sudden and serious damage to tanks, rivers, channels, or other works, when for the general good immediate repair is necessary.

The Act should also contain a few declaratory provisions of a general nature.

11. In preparing the Draft, Mr. Norton will be at full liberty to communicate freely with the Board of Revenue and with the Chief Engineer, as well as with Officers in the interior, both in the Revenue and the Public Works Department; and all Officers so applied to by him will hold themselves bound to afford him all the information and assistance in their power, on the points whereon he may desire either.

J. D. BOURDILLON,
Secretary to Government.

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(3)

Extract from the Proceedings of the Board of Revenue, dated 30th June 1856, No. 2000.

The Chief Engineer having addressed the Government on the necessity for a Legislative Enactment for the protection of public works, and submitted to them a Draft Act prepared at his request by the Collector of Tanjore, the Government in their Extract Minutes of Consultation dated the 21st of May last, No. 747, gave expression to their opinion as to what the provisions of the proposed Act should be, and forwarded all the papers connected with the subject to the Government Pleader requesting him to prepare the Draft of an Act in accordance with the views they had expressed, and authorizing him to communicate freely with the Board, and with public Officers in the Provinces upon all points on which he might require their assistance.

2. With the letter now received, Mr. Norton transmits for the Board's consideration the Draft Act he has prepared in consequence of the Government orders, and the Board now propose briefly to examine its provisions.

Preamble.

3. The Preamble of the Draft sets out with declaring to what extent the Government have a property in rivers, streams and springs; and in the Board's opinion the definition is too restricted, the right of Government is limited in the draft to "all rivers and natural streams and springs in land unoccupied or belonging to Government," which would exclude the Government from all property in, and from all right to control a river whose course was through cultivated land. The evils that would result from an admission of this limitation are incalculable, it would at once deprive the Government of all control over every river on which the irrigation of Tanjore depends, and the Board are strongly of opinion that the right of the state to rivers, and running water generally must be maintained.

4. If however there should be difficulty in defining what is to be considered a river, and what a mere brook, and in declaring what are the rights of Government in Zemindary, as well as in Ryotwar Districts, the Board would suggest that it would be sufficient if the Preamble simply declared that the object of the Act was to protect from injury public and private works of irrigation, navigation, or drainage, and to prevent the forcible and irregular diversion of water whether the property of the State or of private persons.

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(4)

Letter—from J. B. Norton, Esq., Government Pleader.
To—the Secretary to Government, Public Works Department.
Dated—3rd July 1856.

1. I have the honour to transmit herewith Draft of the Act for the preservation of works of Irrigation, etc.

2. I return herewith Colonel Baird Smith's work, and forward letter from the Secretary of the Revenue Board to whom I have submitted the Draft, and also a letter from the department of Public Works.

3. I have not felt myself at liberty to depart from the instructions of Government by inserting the addition pointed to by the latter authority. It can easily be done if required. Nor have I taken notice of the 12th paragraph of the letter from the Secretary of the Revenue Board; since it appears to me that it is for the Right Honourable the Governor in Council in the first instance to determine whether it is expedient so much to extend the scope of this Act, and if so, I should require much more information and the instructions of Government to guide me in following out their wishes.

4. I have aimed at the greatest simplicity and perspicuity of language to the exclusion of all technicalities. I do not feel the force of the Revenue Board's observation as to the Preamble. The words "in land unoccupied or belonging to Government" clearly only had reference to springs of water; not to rivers or streams. However, to avoid all chance of misconstructions, I have substituted the words "as well as" in lieu of "and."

5. I have inserted in obedience to the orders of Government the declaration of the right of Government to levy a tax for the use of water; but as this Act does not again allude to this subject, I would suggest that the words in the Preamble from "and it" down to "irrigation" which I have bracketted might be omitted.

6. Section I provides for the punishment of injuries—malicious, wilful or arising from neglect. Its words are wide enough to meet the wants of streams on the Neilgherries.

DRAFT ACT PREPARED BY MR. NORTON.

An Act for the better preservation of works of Irrigation, Navigation, and Drainage; for the prevention and punishment of injury thereto, caused wilfully, maliciously, or through culpable negligence; for the punishment of persons wasting, stealing, or defiling the water; and for legalizing and remunerating compulsory labour in particular cases.

Whereas great injury is frequently committed to public and private works constructed for purposes of irrigation, navigation, and drainage, through malice or wilfully or through culpable neglect, and whereas it is expedient to provide for the prevention of such injurious acts and for the punishment of parties committing them, and also for the better preservation of all such works in general.

Malicious, wilful or negligent injury how punishable.

I. It is hereby enacted that whoever shall maliciously, wilfully, or through culpable negligence, do any injury to, or trespass or suffer his cattle of whatever kind to trespass on any Government or private work of irrigation, navigation, or drainage, or any work connected therewith, for the protection, preservation or distribution of the water thereof, or who shall divert or attempt to divert any water from its ordinary channel otherwise than is allowed by local custom or long usage or under the authority of, or express agreement with the Government or other owner thereof, or who shall wilfully defile the water of any canal, or other works of irrigation, navigation, or drainage, without such permission or agreement, shall on conviction before such authority as is hereinafter provided be liable to a fine not exceeding 200 rupees and in default of payment or in lieu thereof to imprisonment for a term not exceeding six months, with or without hard labour at the discretion of such authority.

Jurisdiction of various authorities.

II. Offences under this Act shall be punishable by Heads of Police to the extent of their power for the time being in the punishment of assaults and by Magistrates and their assistants to the extent of their general power under Section XXXII of Regulation IX of 1816 and Section LIV of Act VII of 1843, provided that all proceedings of any authority under this Act shall be subject to such supervision and appeal as are respectively provided touching proceedings and decisions of such authority in pursuance of the powers in this clause referred to.

Damages for injury how recoverable.

III. It shall be lawful for the authority convicting any offender under this Act to inquire into the extent of injury committed and upon conviction to make an order upon such offender calling upon him to pay in addition to any penalty for such offence, a sum sufficient to repair the injury or remove the obstruction as the case may be, and such sum shall be recoverable by the means at present or hereafter lawful for recovery of arrears of Land Revenue.

Course where offender cannot be discovered, etc.

IV. Wherever any such injury as this Act provides for shall be committed and the offender cannot be discovered or cannot be brought to justice, or if he be too poor to make good the damage done, in every such case the Collector of the District may give directions for the repair of such injury and may order the cost thereof to be charged to the owners or occupants of the adjoining villages or apportioned among the ryots of the village or villages adjacent to such injured work in proportion to their holdings as he may consider just and equitable and such costs shall be recoverable in the same manner as arrears of Land Revenue.

Diversion or fraudulent appropriation of water how punishable.

V. Any person who shall wilfully divert, waste or fraudulently appropriate water the property of Government or of any private individual, shall upon conviction thereof before any of the authorities in this Act mentioned be liable to a fine not exceeding 200 rupees, or in default of payment or in lieu thereof to imprisonment not exceeding six months with or without hard labour at the discretion of such authority; provided that the exaction of such fine or infliction of such punishment shall not bar Government or

any private individual from suing to recover damages for the injury which it or he may have sustained by such diversion or waste.

Labour on local works how compellable.

VI. Wherever by local custom any operations in connection with irrigation and drainage are performed by the joint labour of a village community, any person refusing to contribute his share or proportion of labour towards such operation upon requisition made to him in writing by the Head of the village or other proper or competent Revenue authority, shall upon proof of such refusal before any of the authorities in this Act mentioned be liable to a fine not exceeding one hundred rupees, or in default of payment or in lieu thereof to imprisonment not exceeding three months with or without hard labour at the discretion of such authority.

Labour on certain emergent occasions how compellable and how to be remunerated.

VII. And whereas great loss is often occasioned to the Government and private individuals by the breaches of tanks, rivers or channel banks or by accidents of a similar nature, and it is expedient as far as possible to guard against such loss in such cases; it is hereby enacted that on the occasion of any sudden emergency of the character in this section referred to, it shall be lawful for any Officer in charge of any such work of navigation, irrigation or drainage, or in the absence of such Officer for the Head of the village or villages in the vicinity of such accident, to call upon all the able bodied male inhabitants of such village or villages except such as by caste are prohibited from or by position are unused to labour, to co-operate for the immediate repair of the work so breached or otherwise suddenly injured, and any person refusing to labour when so called upon shall be liable on proof of such call and refusal before any of the authorities in this Act mentioned to a fine not exceeding one hundred rupees, or in default of the payment or in lieu thereof to imprisonment not exceeding three months with or without hard labour at the discretion of such authority; provided that every person so labouring shall be paid at such rates for day and night work as from time to time may be fixed by the Governor in Council under Section VIII of this Act, the rate for such labour by day being at least equal to that usually paid in the neighbourhood for similar work, and the rate for such labour by night being double of that so payable for labour by day. And if such labour shall have been performed on any work belonging to Government, the same shall be paid for out of the public Treasury upon the order of the Collector of the District in which such accident or other injury shall have occurred. And if such labour shall have been bestowed upon any work belonging to any private individual, the owner or occupier of such work shall be liable to pay for such labour at the same rate as the Government and the sum or sums so payable shall be recoverable by the same means as are now or hereafter may be lawful for the recovery of the arrears of Land Revenue.

Governor in Council to make Bye-Laws.

VIII. For the better carrying out of the provisions of this Act, the Governor in Council of Fort St. George, is hereby empowered to make such rules as from time to time may seem to him expedient and such rules upon publication in the Fort Saint George Gazette, shall have the force of Law.

Interpretation clause.

IX. Words in this Act used in the "singular" or "masculine" shall be taken also in their "plural" or "feminine" signification. The term "owner" shall include the managing member of any joint Hindu family. The terms Collector, Magistrate, and Head of Police, shall include any person lawfully exercising the powers of those offices respectively, under this Act.

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(5)

22.18

Order—No. 1392, Public Works, dated 9th August 1856.

With this letter, the Government Pleader submits the Draft Act for the protection of works of irrigation, &c. It has been submitted to the Board of Revenue and except in two points their suggestions have been acted on.

2. Mr. Norton thinks (paragraph 5), the declaration of the right of Government to levy a tax for the use of water, to be out of place in this Act; the Government resolve therefore that it shall be retained in the separate Draft Act providing for the liability of Zemindars and others for a share of the cost of Government improvements by which they benefit, which is now under preparation by the Board of Revenue.* They also resolve to request the Board to hasten the submission of that Draft Act.

* Extract Minutes Consultation June 14th, 1856, No. 612, at page 45.

3. That provision being omitted, the preceding declaration as to the right of Government to rivers, etc., will need also to be omitted and for the same reason, viz., that it stands by itself and has no direct bearing on the succeeding parts of the Act. The preamble will then commence with the words "Whereas great injury".

4. The reason given by Mr. Norton for omitting to extend the Act as proposed by the Board appears sufficient; and the addition does not seem very necessary. It is true that made roads, bridges and public buildings deserve protection; but they do not require it in nearly the same degree as works of irrigation, navigation and drainage. The object also is totally distinct, and it seems undesirable to defer or impede the passing of the Act for the latter, which is much wanted, in order to provide for the former.

* * * * *

7. In section I the Government have added a provision against the defiling of water. This is in accordance with the Rules of Upper India. They have also made some verbal alterations; and they now resolve to forward a copy of the revised draft to the Madras Member of the Legislative Council in view to its enactment.

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(6)

Letter—from D. Elliot, Esq, Member of the Legislative Council.
To—D. Bourdillon, Esq., Secretary to Government, Revenue Department, Fort St. George.
Dated—Fort William, the 8th December 1856.

From the note on the Draft Act for the protection of works of Irrigation, Navigation and Drainage transmitted to me with your letter, dated 9th August last, which I delivered to you on my late visit to Madras, the Government will be aware of my opinion that the provisions regarding mischief in the Penal Code would be found sufficient for the principal objects aimed at in the proposed Law, and that it was advisable to wait for its enactment rather than to move the Legislative Council to pass a special law.

The Penal Code was read a first time on the 20th instant. At my instance the provision relating to mischief have been somewhat modified and extended by the Select Committee with a view to meet more fully the intention of the Draft Act.

Clause 48 of chapter XVIII defines mischief in terms, I think, sufficiently comprehensive to cover all the offences mentioned in the Draft Act.

Clause 49 provides for the punishment of offences falling within the definition with imprisonment which may extend to three months or with fine or with both.

Clause 50 allows the imprisonment to be extended to two years if the mischief causes damage to the amount of Rs. 50.

Clause 53 provides for mischief caused by destroying or injuring works, etc., for the purpose of irrigation, or by wrongfully drawing off or diverting water from a river, well, channel, reservior, or work for irrigation so as to diminish the supply of water for agricultural purposes.

Clause 54 provides for mischief caused by destroying or injuring any public road or navigable channel.

Clause 55 provides for mischief which has caused an inundation or destruction to public drainage attended with damage to the amount of 100 rupees.

In all these clauses the penalty is imprisonment, which may extend to five years, or fine, or both.

Clause 48, which defines mischief, is meant to include damage by trespass of cattle.

The provisions in sections III and IV of the Draft Act, seem to belong properly to procedure. It is likely that there will be a provision in the Code of procedure for allowing compensation to the injured party out of any fine levied from the offender. Such a provision as that proposed in section IV will hardly find place in a general code.

With regard to sections VI and VII of the Draft Act, I understand that Government have called for further information, upon the consideration of which it will be determined whether or not to apply to the Legislative Council for a special law to authorise proceedings of the nature contemplated in those sections.

Such special legislation the Legislative Council is averse to and strong reasons must be shown to induce it to agree thereto.

The Penal Code is to be read a second time at the first meeting of the Legislative Council in January and will then be immediately published for general information and criticism; and the suggestion of amendments.

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(7)

Order—No. 139, dated 20th January 1857.

Ordered to be communicated to the Board of Revenue. As soon as the Penal Code shall be published, the Board will be pleased to take the provisions referred to by Mr. Elliot into consideration and report to Government how far they will effect, in their opinion the object contemplated in the Draft Act in question.

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(8)

Letter—from W. Hudleston, Esq., Acting Secretary to the Board of Revenue.
To—T. Pycroft, Esq., Chief Secretary to Government.
Dated—8th October 1859.
No.—4224.

I am directed by the Board of Revenue to call the attention of Government to the fact that no provision is made in the revised forms of Title Deeds received with Extract from Minutes of Consultation, dated 21st September 1859, for maintaining the control of Government over springs and running water.

E.M.C., 20th January 1857, P.W.D., No. 139.

2. The correspondence which has already passed on this subject is printed at pages 73-6 of the Board's Circular Orders of 1856. The Act for the protection of works of irrigation therein alluded to has since been laid aside, but it is contemplated to make sufficient provision in the new Penal Code for the punishment of offences relating to works of irrigation. That Code has not yet been enacted, and the course prescribed by Government in Extract from Minutes of Consultation, dated 26th July 1856, Revenue Department, No. 772, is therefore still followed.

See page 18, *supra*.

3. In accordance with the instructions of Government contained in paragraph 3 of the abovementioned Extract from Minutes of Consultation, the Government Pleader Sudder Udalut with the enclosed letter, dated 31st August 1858, furnished the Board with a form of reservation and covenant which he is of opinion should be introduced into leases of lands by or through which springs and streams of water pass.

4. The Board, however, think that the draft clauses furnished by Mr. Dale are quite unsuited to the forms recently approved of by Government. Covenants are now dispensed with, and the clause proposed for insertion in the Title Deed, contains so much legal phraseology that it could not well be introduced in the new

forms, which consist of a few simple phrases. Under these circumstances the Board are of opinion that it will be sufficient if Government distinctly notify that the reservations regarding rights of way, and springs, streams, &c., minerals, and land required for new roads, water channels, &c., as well as the rule requiring the grantee to construct and maintain boundary marks round his property, which are contained in paragraphs XIII to XVIII, inclusive of the Manual sanctioned for adoption by Government on 19th December 1849, continue in full force, and are no way affected by the change in the nature of the title granted.

C.O. Book 1st Vol., page 583.

5. The Board have retained minerals in the above list, but they are by no means sure that the development of such resources will not be retarded rather than advanced by such a reservation and would suggest its abandonment.

6. The Board are of opinion that the above plan is preferable to the insertion in the body of the Title Deed of any one of these conditions to the exclusion of the rest, whereby their relinquishment might be with good reason assumed to have been made by Government, and to insert the whole might render the Title Deeds cumbrous, but should Government object to the plan proposed, the Board think that the insertion of *all* the points reserved is absolutely necessary to secure the rights of Government, if any one right is particularised.

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(9)

Order—No. 1524, dated 9th November 1859.

The Board call attention to the fact that the new forms of Title Deeds for land granted under the order of August 5th, 1859, contain no provision for securing the control of Government over springs and running water. They lay before Government a letter from the Government Pleader dated August 31st, 1858, with a form of reservation of that and other rights of Government, to be inserted in future leases; but in place of that form, which they consider too long, the Board advise that Government should notify that the provisions of Rules 13 to 18 of the "Manual" of the 19th December 1849 still continue in force.

2. The Government have carefully considered this recommendation, but it does not appear to them that even the addition to the Title Deeds proposed by the Board is necessary. Five particulars are enumerated as requiring to be maintained; first, the grantee's obligation to erect and maintain boundary marks round his land; second, his obligation to respect roads, foot-paths, and rights of way; third, the full control of Government over springs and streams; fourth, the right of Government to all minerals; fifth, the right of Government to take land for roads or for other public purposes.

3. It appears to Government that all these rights, so far as it is desirable to maintain them, are sufficiently protected by the general law. The maintenance of boundary marks is a private concern which may safely be left to private interest; and as to minerals, the Government agree with the Board that the reservation of them to Government is inexpedient. The right of Government to take land required for a public purpose is fully established by Act VI of 1857, and the right of way as well as rights connected with the occupation of running water, may also be safely left, in the opinion of Government, to the General law.

4. The right which the Board seek to uphold or to assert in connection with streams and springs, appears to be not any actual right either of Government or of private persons, but a power on the part of Government to control the distribution of water, with reference mainly to the Nilgiri hills. This power it does not appear necessary or expedient that the Government should exercise; it seems preferable that all rights in running water should be left, like other rights, to be guarded by the general law. If, however the Board had any other meaning, the Government will be fully prepared to give consideration to any further representations that they may make on the subject, as it is by no means their wish to pass a final order on this important question without full deliberation.

(1)

Extract from the Third Report from Mr. Hudleston Stokes on Special duty in revising the Revenue Laws of the Madras Presidency, to the Chief Secretary to Government, dated 1st December 1855.

1. Adhering to the plan already laid down, I have in this report to review the laws that now prescribe the powers and duties of Revenue officers under this Government, and to sketch out the Act proposed to be substituted in their stead. The law in question is found in the 21 enactments enumerated in the margin in chronological order.

* * * * *

50. The change I would propose as regards the civil jurisdiction of Revenue officers may appear startling, but I believe that, on consideration, it will commend itself to those who have experimental acquaintance with the present practice, of which, indeed, it would be little more than a legal recognition, and reduction to system. I would leave all properly judicial work to the judicial tribunals, that is to say, Village and District Munsifs, Sudder Amins and Judges Courts, and where they exist—Courts of Small Causes—and I would declare the order of the Revenue officers passed on summary investigation in the manner now customary upon miscellaneous petitions, that is either before the Collector, or by the Tahsildars, to be binding until set aside by a competent tribunal on a suit instituted within, say, one month from the delivery of the Collector's order. The class of causes thus cognisable by Revenue officers would be defined as in the Bombay Code. Provision will be made for the employment of arbitration under a simpler form of procedure than the present one. Regulation XII of 1816 has proved practically useless from the preciseness and complexity of its forms. To make use of the Tahsildars in the primary investigation of such causes is strictly in keeping with the principle sanctioned by section 4, Regulation VII of 1828. By Regulation VI of 1830 of Bombay, the Collector's subordinates not only investigate, but pass decisions in petty revenue suits. In fact, if Collectors are required to do judicial work in a judicial way, they will neither do it so well, nor so quickly as the courts themselves, and few will do it at all.

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52. For further explanations, I refer to the sketch of the proposed Act.

Sketch.

* * * * *

Summary powers of Collectors in certain civil causes.

27. It shall be competent to Collectors on summary investigation either before themselves or made under their orders by Tahsildars, to pass orders in cases which may be brought before them personally or by petition . . . . of disputes concerning the use of water. Collectors and their subordinates may exercise the powers of the Civil Courts for procuring attendance of parties for these investigations.

Marginal remarks.

This is intended to embody the substance of sections 15 and 16 of V of 1822, and to supersede XII of 1816. But it does not contemplate the award of costs or damages by Collector.

28. In all such cases the Collector's order shall be binding, until set aside by a competent tribunal on a suit instituted within one month from the delivery of the Collector's order.

29. Tahsildars may exercise similar authority in such cases where the value in dispute may not exceed . . . . . rupees. Appeals shall lie, within fourteen days from the delivery of the Tahsildar's decision, to the Collector.

The Bombay Code says 500 rupees.

30. When Collectors may consider it advisable, they may refer complaints of the above nature to the decision of village or district panchayats under Regulations V and VII of 1816, or of arbitrators under the forms prescribed in Act XX of 1852.

31. An appeal by regular suit in the Court shall be from the award of arbitrators in the same manner as from the order of the Collector, unless both parties shall have bound themselves to such award as final. In this case or when the time for appeal may have expired, the Collector may give effect to the award of arbitrators. When defaulters respecting possession of lands or crops may be referred to a panchayat or to arbitrators, the Collector may place one party in possession, pending the decision.

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(2)

Proceedings of the Board of Revenue, dated 19th June 1856, No. 1884.

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17. The sections of the draft Act which relate to this part of a Collector's duties are only five in number (27 to 31), and in this space it is proposed to compress the substance of Regulation XII of 1816 and Regulation V of 1822. To this arrangement the Board consider that objection may be urged, for, desirable as it is to avoid all unnecessary legislation, it seems impossible to legislate successfully in so brief a manner for so extensive a subject. The summary suits to be heard by a Collector are of a very varied nature, comprising disputes about rent, wrongful distraint of property, occupancy of and dispossession from, land, disputed boundaries, diversion of water, removal of crops, etc., and it seems essential that the powers given to a Collector for bringing these suits to a decision, and enforcing his decrees should form a substantial part of the law, and be fully and clearly detailed in the Act, instead of being mainly left to be provided for by subsidiary rules to be framed by the local Executive Government.

Summary Powers of Collectors in Civil causes.

18. * * * * *

19. The Board will now proceed to notice briefly four important points connected with this branch of a Collector's duties.

I. Mr. Stokes proposes to limit a Collector's authority to deciding who is to enjoy the land, the water, or the produce under dispute, until a Civil Court decides the matter, and he takes away the power which Regulation V of 1822 gives to Collectors of awarding costs and damages. The Board are divided in opinion regarding the propriety of this course. The acting Third Member considers that summary powers are given to a Collector, to provide for the cultivation of the land, the security of the revenue, and the preservation of the peace, and that it is therefore sufficient for him to decide the question of occupancy, leaving the civil courts to settle claims for damages and costs if the complainant should see fit to file a regular suit for the purpose. As arguments for this course, the acting Third Member points out that a Collector's time is already so occupied that he should be freed as much as possible from judicial investigations, and that a complainant after being promptly restored to the possession of land or crops of which he had been wrongfully deprived, can be left without injurious consequences to seek redress in the civil courts for any damages which he may claim.

See marginal note to section 27 of the Draft Act.

The Second Member, on the other hand, considers that the main object of a Collector's summary decision is to stop litigation in the courts, by granting to complainants a prompt and "efficient redress" without the institution of a regular

Preamble to Regulation V of 1822.

suit, "to the expense of which the means of the ryots are in general inadequate" This object cannot be attained unless a plaintiff obtains redress from the Collector for the wrong done him. Restoration of the land, property, or produce under dispute, is seldom a sufficient measure; compensation is due for loss occasioned by wrongful dispossession from land or removal of produce, or for the unjust distraint of property; and if Collectors continue to possess the power of awarding damages, these wrongful acts seem likely to be less numerous by being more speedily dealt with.

II. The next point relates to the power of Tahsildars in investigating these suits.

Mr. Stokes' Draft Act* authorises them to hear and determine summary suits of petty value, subject to an appeal to the Collector. Other suits are apparently left for decision by the Collector after a personal investigation, as no authority is given him to direct a Tahsildar to investigate a complaint and forward the record with his opinion for the Collector's disposal. This subject has recently led to a correspondence between Government and the Board; and it is sufficient for the Board to observe that they still hold the views expressed in their Secretary's letter of the 4th June 1855, and in their Proceedings of 21st July idem. They do not wish to oppose Tahsildars being vested with the actual disposal of petty suits, if this course is deemed advisable; but they are still of opinion that Collectors should be able to refer any summary suits to Tahsildars for inquiry and report, according to the Bengal system. They do not see objection to this course, because to adjudicate a case on the record forms an extensive part of our system of civil and criminal justice, and is only what the Collector would have to do on a suit coming in appeal before him, after being first decided by a Tahsildar.

* Section 29.

In the correspondence above referred to, the Board have given their reasons for proposing that the decision in these suits should be formally passed by the Collector and not by the Tahsildar. Their object is only to simplify and expedite justice and instead of mistrusting Tahsildars, they seek to vest them with important and highly confidential functions, by authorising Collectors to pass decrees on their investigation and report.

III. The third point relates to cases in which Government is interested, such for example, as the unauthorised occupancy of waste land, the diversion of water from public sources, etc.

Hitherto these disputes have been settled like disputes between two private parties, or else the rights of Government have been protected by punishing infringements upon them under the magisterial laws against trespass. But Government when alluding to water disputes on the Nilgiris seemed to consider that special provision ought to be made for the settlement of cases in which Government is interested, and the opinion of the Government Pleader has been asked on the point. That officer's reply will hereafter be laid before Government, and the Board presume that the course which is decided on for protecting the public interests on the Nilgiris, will be applicable to other localities.

Extract Minutes Consultation, 8th May 1856, paragraph 3, No. 474.

To Government Pleader, 11th June 1856.

* * * * *

35. There is one subject, in connection with a Collector's powers and duties, which the Board deem right here to bring to the notice of Government, viz., the want of any present power to compel zamindars, inamdars, shrotriemdars, etc., to keep the irrigation works of their estates in order.

36. With their letter † of the 28th April last, No. 1260, the Board forwarded to Government the draft of an Act for compelling zamindars and inamdars to bear a portion of the expense of works which benefited their lands as well as those of Government. But no provision has yet been made for the maintenance of works

† *Note.*—For this letter see page 43, *infra*.

which irrigate exclusively zamindari or inam lands, and it seems advisable to consider how far and in what way the want can be supplied, as the welfare of the landholders depends on irrigation works being kept in efficient order.

37. The subject was adverted to as far back as 1845, when the Supreme* Government recorded the following remarks :—

"In parts of the country where cultivation depends chiefly on extensive works of irrigation, the Governor-General in Council supposes that authority exists somewhere to ensure the punctual repairs of reservoirs and tanks, whether the parties responsible for the same are zamindars or inamdars. . . . .

* Letter from Secretary to Government of India, dated 20th September 1845, received with Extract Minutes of Consultation, dated 8th April 1846.

38. Nothing has, however, since been done, though the decayed state of the tanks and channels in many zamindari and inam villages have given ground for just complaint on the part of the ryots. The omission should therefore, in the Board's opinion, be now supplied, as far as the subject is found to admit of legislation, either by a Special Act or by an addition to that part of the proposed Revenue code which refers to zamindari and inam lands. But the different interests concerned and the varying circumstances under which lands are held, make the subject one of difficulty, and its treatment would require much consideration and care.

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(3)

Extract from the Minutes of Consultation under date the 18th February 1857, No. 173.

1. In their Proceedings above recorded, the Board of Revenue submit their report on Mr. Stokes' third Draft Act for the revision of the Revenue law of this Presidency, viz., that relating to the powers and duties of Revenne officers. The Board go through the Draft Act, taking each part in its order; and the Government proceed to record their views on it, and on the remarks and suggestions of the Board, following the same order.

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Judicial powers of Collectors in civil cases.

11. The next subject is one of much importance, viz., the judicial powers of Collectors in civil cases. The powers of this character now possessed by them are contained in two regulations—XII of 1816 and V of 1822. Under the former, Collectors are empowered to refer to Panchayats claim to lands or crops depending on an unsettled boundary, and also disputes between landholders and their ryots respecting the occupying, cultivating or irrigating of land; and by section 18, Regulation V of 1822, this power is extended to disputes of the same description between ryot and ryot. The former Regulation, as Mr. Stokes truly says, from the complicated and tedious forms of proceeding which it requires, and from the small powers given by it to Collectors, has practically been very little used.

12. Regulation V of 1822 gives power to Collectors to interfere between landholders and ryots in the matter of distraint and sale of property, of exactions by landholders from ryots, and of ouster of ryots by landlords.

Section 11 empowers a Collector to reinstate a ryot dispossessed by another ryot.

By section 15 a Collector may refer disputes brought before him under regulation to a Panchayat, and by section 17 he may put one of the parties in possession in the meanwhile.

13. The state of the law at present is confessedly uncertain and unsatisfactory; Collectors do not exercise powers given by the law, and they exercise others which the law does not give them. Mr. Stokes' proposed enactments, in supersession of the Regulations above referred to, are contained in five sections—27 to 31—and their object, as described in paragraph 50 of his third report, is to leave all proper

judicial work to the established courts of the various grades. Mr. Stokes would make the order of a Collector passed, as at present, on a summary inquiry binding till set aside by a decree of some court, in a suit to be instituted within a month after the order; Tahsildars in like manner to pass orders in cases not exceeding a certain value, to be binding unless appealed from within fourteen days to the Collector. He would also allow the Collector to refer cases to arbitration with or without consent of the parties; in the former case the decree to be final, in the latter an appeal to be open by suit in court. In cases referred to a Panchayat, one party to be put in possession by the Collector.

In section 27 the cases in which Collectors and Tahsildars may thus pass decisions are defined in general terms. The remedy is to extend only to restoring possession, not to giving damages; the latter Mr. Stokes would leave to the courts.

14. The Board's remarks on this part of the Act are contained in paragraphs 17 to 19 of their Proceedings. They think the mode of treatment too brief (paragraph 17) and they notice that the definition of cases given in the draft would include some in which the revenue is not at all concerned, and which therefore, they think, should be excluded (paragraph 18). The Government concur with the Board that the sections under this head are too brief and superficial, and that they do not adequately provide for the effectual interposition of the Collector in the numerous disputes between ryot and zamindar, ryot and inamdar, farmers, etc., in which it is proper that he should have jurisdiction. More precision should certainly be given to this part of the enactment.

15. The Board object to the use of the term "premises" in section 27 as introducing a large number of disputes not connected with cultivation or the cultivating classes. The objection seems well founded in the case of houses and shops in towns. But in agricultural villages, there are various kinds of tenement not comprehended under the term land, which yet are essential to a ryot's holding and form part of his farming property; such are cattle-sheds and stands, threshing floors, stack-yards, etc. The Government Pleader will be requested in preparing the draft Act, to confine the meaning of the term to such buildings as may be connected with farming or agriculture.

16. The Board next proceed (paragraph 19) to notice four points connected with the Collector's jurisdiction in civil suits.

17. The first is, whether a Collector should have power to give compensation for injury sustained (damages), or merely to restore possession. The Second Member (Mr. E. Maltby) was in favour of the former course, the Acting Third (Mr. Forbes) of the latter; and the reasons urged by both are stated. On this subject it may be remarked that without such compensation the redress is incomplete; that the inquiry necessary to ascertain the wrong would usually be sufficient to determine also the measure of injury sustained and that to require the sufferer to go to a second tribunal for the latter part of his remedy would be to force him either to the cost and inconvenience of a second trial or to an abandonment of that part of his right, to the gain of the wrong-doer. For these reasons the Government agree with Mr. Maltby that the Collector ought to be enabled to award damages for injury sustained as well as to redress the wrong for the future.

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20. The third point noticed by the Board relates to cases wherein Government is interested . . . . as the unauthorized appropriation of water from a Government work. Provision for the prevention or redress of all such wrongs is made in section 1 of the draft Act for the protection of irrigation works now before the Legislative Council; or the offender may be sued in the Civil Courts. . . . . The Government do not find that in their order of 8th May, they expressed such an opinion as the Board suppose in clause third of paragraph 19 of their Proceedings.

* * * * *

27. In the close of their Proceedings (paragraphs 35 to 38) the Board advert to a subject not found in Mr. Stokes' draft Acts, but on which they think it necessary to legislate, viz., the fair liability of zamindars and inamdars to keep in repair works of irrigation on their properties. The Board point out that the neglect of these works may and does injuriously affect the interests of the ryots who hold land dependent on them; and that though a wise regard to self-interest would lead the proprietors to keep the works in repair; yet, as a fact, that motive is not sufficient. They argue, therefore, for a law on the subject, but they give no opinion as to the scope and provisions of such a law, merely saying that its treatment would require much consideration and care. This subject was brought before the Board by the Collector of Madura in a letter * which they lately submitted to Government with their review of Mr. Stokes' draft Act on the subject of inams, wherein they noticed a second suggestion in the same letter.

* October 13th, 1855.

28. The views stated by Mr. Parker (Collector of Madura), and supported by the Board appear undeniably sound, though certainly so far as concerns zamindars holding under permanent sunnads, they seem to be opposed to those maintained lately by the Board on the question of the liability of zamindars to make and maintain roads. The Government are of opinion that the necessary enactment for giving those views effect might be introduced without much impropriety in the present Act, among the duties of Collectors; and the Board will be good enough to submit, for the approval of Government, a detail of the provisions which they would propose to include in the Act on this subject.

Proceedings of the Board of Revenue, dated 21st August 1856, No. 2660, pages 2 to 7.

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(4)

G.O., No. 1014, dated 29th July 1859.

Read—Proceedings of the Board of Revenue, No. 2408, dated 23rd June 1859.

Order—No. 1014, dated 29th July 1859.

The Board of Revenue submit their remarks on two † of the Revenue Draft Acts prepared by Mr. Mayne under Mr. Parker's instructions. These Acts for the most part only put in legal terms the provisions decided on by Government in 1855 and 1856 after much careful thought and discussion with the Board, and there was little consequently for the Board to remark on now. Their observations for the most part touch on verbal or other small changes which they advocate; on these points the Government request the Board to communicate with Mr. Mayne, as the phrases objected to are his, and he will either admit the correction or give reasons for his own language.

† Draft of an Act for regulating the powers and duties of the Madras Revenue Authorities.
Do. do. constituting a Court of Wards.

2. There are only a few questions not verbal, which Government will now notice. The first is that mentioned at the end of paragraph 7 of the Board's Proceedings, viz., whether the Collector should have the power to interfere to fix the assessment of land not being Government land, not previously assessed. It appears hardly necessary that there should be any interference in such a case; the ryot takes the land of his own free will, and might be left to make his own bargain. It would be hard, however, to shew why, if this is made the law, it should not apply also to the case of assessed land waste for several years, and taken afresh by a new tenant. It seems doubtful, however, whether the clause is intended to apply to other than Government land. If it is, it appears to need to be made clearer, and on this point also the Board will be pleased to confer with Mr. Mayne.

3. Paragraph 9 refers to a question which was largely discussed in 1855–56, and decided by Government to the effect provided in the Draft Act, viz., that in the Civil cases adjudicable by the Revenue officers, Tahsildars shall *decide* and not merely *report*. The Board still adhere to the opinion which they expressed before; but Government consider the change to be very important, especially with reference to the new and higher position shortly to be given to Tahsildars. With regard to the point raised in paragraph 10, viz., to what authority an appeal shall lie from the Tahsildar's decision, no reason appears for any change in the Draft Act. The appeal will be to the Collector; and a party still dissatisfied, may go if he likes to the Courts by regular suit, as if the Collector's decision had been in the first instance.

4. In paragraph 14 the Board advise that Collectors should be empowered to compel Zemindars, etc., to repair tanks, not only when dangerous to Government works or to the public, but also in order to protect the interest of those holding land under the tank. This would be a new power given to Collectors, and a new interference with private proprietors; and the Government are not prepared to advocate such an enactment.

J. D. Bourdillon,
Secretary to Government.

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(5)

Extract from the President's Announcement in Legislative Council on 2nd December 1862.

" . . . . owing to changes which had recently occurred in the rules by which the purchase and sale of lands were regulated and owing to other questions affecting the Revenue system which were still under consideration, the Government had determined to withdraw the Revenue Code for the present."

(1)

Letter—from I. GOLDINGHAM, Esq., Commissioner, Northern Circars.
To—J. D. BOURDILLON, Esq., Secretary to Government, Revenue Department, Fort St. George.
Dated—Vizagapatam, the 15th June 1855.

I have the honour to submit, for the information of Government, copy of the correspondence noted in the margin, with the Collector of Masulipatam, regarding the question as to whether Zemindars shall bear a proportion of the expenses incurred in the construction of river embankment.

Not printed.

2. The embankments are necessary for the protection of the Government lands, the Zemindaries participate largely in the benefit derived from these works, and it is but fair that they should contribute something towards the expenses incurred. It will, however, be seen that they do not consent to this proposition and it is the opinion of the Civil Engineer that as the embankments are required for the protection of the Delta generally the whole cost should be borne by Government till the irrigation is more advanced and its value recognized when the Zemindars may be called upon to bear their shares of the entire cost of the works.

3. I am of opinion that the question may remain in abeyance for the present, but when the irrigation is complete decided measures will be necessary for enforcing what may be finally determined to be the rights of Government.

4. The sum already expended for repairing and strengthening the embankment is Rs. 4,514 and a further estimate for Rs. 65,513 was under the consideration of the Collector when he first addressed me in February last.

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(2)

Extract from the Minutes of Consultation under date, the 13th July 1855, No. 22.

In this letter the Commissioner raises the question whether Zemindars are to be considered liable for their proportionate share of the cost of embanking rivers which pass through their lands as well as through Government lands.

2. The Right Honourable the Governor in Council has consulted the Regulations and Circular Orders of Bengal for any enactments or rules bearing on the present case, but without success. The Zemindars in Bengal seem to be universally under special obligation by the terms of the settlement to maintain the embankments within their estates, and there are many Regulations and Orders for enforcing this obligation. But it does not appear that Government anywhere in that Presidency has occasion to undertake such works on their own account, and therefore there is no adjustment of the shares of the two parties.

3. Taking a broad view of the subject it appears to Government that Zemindars may fairly be required to bear their share of improvement by which they certainly benefit and also that the Government, as the paramount power, may justly determine in what cases such improvements shall be undertaken. These two points being settled, it remains to decide the principles by which the shares of the two parties in the outlay shall be regulated and the machinery whereby the actual shares in each case shall be settled. This should be as far as possible by some agency not open to the suspicion of bias either way and some degree of liberality on the part of Government in admitting of payment by instalments would be proper.

4. In order to carry any measure of the character into effect an Act of the Legislature will be necessary, and the Right Honourable the Governor in Council resolves to call on both the Board of Revenue and the Commissioner, Northern Circars, to state their opinion, respectively, as to the tenor and scope proper for such an Act. It is desirable that it should be general and comprehensive, so as to

include Zemindars and Landholders of all degrees of magnitude as well as Enamdars and also to comprise other improvements besides mere embanking, for example, the case of irrigation should also be provided for, viz., to empower the Government to enforce payment at an equitable rate for water supplied from Government irrigation works to Zemindary or Enam lands.

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(3)

Extract from the Minutes of Consultation under date the 24th December 1855, No. 1376.

Read again letters from the Commissioner, Northern Circars, dated respectively 15th June and 20th September 1855, Nos. 71 and 116, and recorded in Diaries to Consultation, 17th July and 23rd October 1855.

Read—also Extract from the Proceedings of the Board of Revenue, 26th October 1855, No. 2814.

These papers relate to the proposal to obtain a legislative enactment empowering the Government to charge proprietors of land with a share of the cost of improvements undertaken by Government and benefiting both Government lands and the lands of such proprietors.

2. The question was brought forward by the Commissioner in the Northern Circars in his letter of the 15th June 1855, with reference to the embanking of the Kistna in the Masulipatam district; and in Extract Minutes of Consultation, July 13th, Government declared their opinion (para. 3) that zamindars may fairly be required to pay their proper share of the cost of improvements by which they benefit and that Government, as the paramount power, may justly determine in what cases such improvements shall be undertaken. They were of opinion that the improvements to be so undertaken should be not only river embankments, but also drainage works and that Government should also be empowered to levy a fair rate for water supplied to proprietary lands This general expression of the views of Government on the subject was referred to the Board of Revenue and the Commissioner in the Northern Circars, for their opinions respectively as to the scope and tenor of an Act to confer the necessary power on the Government and in particular, as to the principles on which the shares of the two parties (viz., Government and the private individuals concerned) should be regulated, and the machinery by which the actual shares in each case should be settled. The letters of the 20th September and 26th October above recorded, reply to this reference.

3. In his letter of the 20th September, the Commissioner submits an outline of the draft of an Act which he considers proper for the purpose, accompanied by explanations. His views are that the works to be comprehended within the Act should be the construction, or the restoration after serious injury, of river embankments, tanks, channels whether of irrigation or of drainage, and generally all works connected with the protection of land from inundation, or with irrigation or drainage, but that mere ordinary repairs ought not to come within its provisions.

As to the parties to be subject to the Act, the Commissioner thinks they should be all holders of land settled permanently, (or for a fixed term, it may be inferred, as he expressly includes *renters*) as well as of lands wholly or partially exempt from the ordinary Government demand. He also gives his reasons for not making the Act applicable to the holders of land at full assessment, or to persons not holding land at all; but it was never intended by Government that these classes should be included.

In regard to the mode of levying the charge on private parties, the Commissioner is of opinion that it might be paid at once in a sum of money, or might be converted into an addition to the peshcash of the estate, or into a rate on the land actually

benefited. In the first case he suggests that the amount should be determined, at the option of the parties, either by the Collector, or under Act XX of 1852; and in the second and third cases, by the Revenue Authorities.

4. The Board of Revenue, on the other hand, are of opinion that the proposed compulsory power ought not to extend to the *construction* of works of irrigation, but that it may properly include the repair of existing works of that class in which Government and individuals are jointly interested.

On the whole they think that the Act should declare that where the *safety* of the country requires new works, or where works, the joint property of Government and of individuals, need repair, the Government shall have power to determine the nature and extent of the work to be undertaken.

As respects the mode of apportioning the charge, the Board say that it would be easy to divide it according to the extent and value of the lands concerned belonging to the two parties respectively, but they think it will be proper to allow the private party the option of paying interest on his share as on a loan, at the rate of interest paid on Government paper. The Board add further that only the land actually benefited should be liable in case of default of payment.

As to the agency and means to be employed in determining the proportions of the payment, the Board observe that Act XX of 1852 might properly be followed. They think it unnecessary to obtain power to enforce payment of a rate for water supplied by Government to private proprietors, because it is almost always practicable to cut off the supply, and because they are not aware that the right of Government to levy such a rate is contested. The act of surreptitiously taking water without right, they remark, ought to be made a punishable offence.

5. Comparing the opinions of the two authorities, the views of the Commissioner as to the extent of the powers to be taken are much broader than those of the Board. The Commissioner would include embankments, drainage works, and works of irrigation, while the Board would exclude the formation of works of irrigation and, as it seems, of drainage works also. On the other hand the Board take in the case of the repair of works held jointly by Government and individuals, to which the Commissioner does not advert.

6. The Government do not concur with the Board in excluding the construction of works of irrigation and drainage works from the scope of the Act. The object in view in desiring legislation on the matter is to meet the case of extensive improvements which, if effected at all, must necessarily benefit certain persons, by providing power to charge such persons with their fair share of the cost, proportioned to the benefit received by them. This is a public gain; because, without the power of obtaining reimbursement, the Government may probably be often deterred from undertaking the improvements. The embanking of rivers is certainly a work of this nature; and drainage works are clearly not less so. If, for example, the Government undertake the drainage of the lower part of the Rajahmundry district, it is evident that the Zamindari and Inam lands lying in the same region must benefit, as certainly as similar lands within the influence of an embankment must benefit by that. In both cases, regard being had to their respective positions, such lands would gain equally with the Government lands. It seems only fair therefore that Government should have the power of obliging the owners of such private lands to pay their fair share of the cost. A precedent in point to the drainage works is found in the case of the similar works in Ireland. There are many situations in that country wherein a number of proprietors combining together in a set of drainage works, may greatly improve the value of their several properties, and an Act of Parliament for the purpose has empowered a certain proportion of the proprietors interested in any such proposed improvement, to undertake it and to levy a fair share of the cost on the dissentients. The present proposal is to give this power to Government as the paramount authority and greatest Landlord throughout the Country.

7. Works of irrigation excluded by the Board are not precisely in the same predicament; viz., they are not such, generally, that certain lands must inevitably benefit by them from their mere position. In general it is in the power of the Government Officers, as the Board notice, to cut off the supply of water from any proprietor not wishing to receive it; but this is not universally true; and to meet the exceptional

cases in which lands must benefit unavoidably, it is the opinion of Government that irrigation works also should be brought within the terms of the Act. The Government do not recognize the force of the Board's objection that people ought not in any circumstances to be obliged to lay out their money to their own profit. It was this objection which led the Board to exclude drainage works; but they seem to have overlooked the fact that it applies also, and with scarcely less force, both to river embankments and to the repair of works of irrigation held jointly by Government and by proprietors, in the case of both which, nevertheless, they hold that compulsion may be applied.

8. Some minor questions connected with the subject require to be noticed, and first, that of the proper principle by which to determine the share of the cost to be paid by Government and by private parties. It seems the fairest plan to apportion the charge not to the mere extent of the land affected, but to that considered jointly with the productiveness of the land and the degree of injury prevented or the gain obtained. Of a thousand acres benefited by any given embankment or drainage works, five hundred will probably lie lower and consequently will have been liable to much more serious injury than the other five hundred. It seems only fair therefore that the low lying land should contribute more largely to the cost than the higher land. So also fertile lands should contribute more than poorer soils, because on them the loss or gain is greater.

9. As to the form of repayment, the Government approve of the three modes suggested by Mr. Goldingham, as noticed above in paragraph 3; and they consent also to that added by the Board with a slight modification. The Board propose that liberty should be allowed to the proprietors at their option to pay interest on their share of the cost as on a loan; but the Government think that in every such case the terms should provide for the payment of the capital sum within a certain time by instalments. In other words, the stipulation would be for payment of the amount by instalments, with interest. This is the practice in England, where persons borrowing money for improvements from Government, repay it at such a rate per annum as extinguishes the debt, principal and interest, in a certain number of years.

10. A further point is, that provision should also be made for the ordinary repairs of the works thus constructed. It would not be fair, as the Commissioner truly observes, to begin anew to levy the cost of the ordinary repairs of existing works; but when works shall be constructed under the Act, it will be quite right and necessary that they should be repaired as well as originally formed, at the common cost of all who benefit by them. The same considerations which make it proper to enforce payment for their construction on private persons, make it proper also to enforce payment for their repair. Some questions of nicety will arise in subordination to this general question; as, for example, whether the cost of repairs is to be regarded as a local charge, or whether any such expenditure shall be recoverable from the body of contributors generally; in other words, in the case of a breach in a long line of embankment, is the cost of the repair to be borne by those immediately concerned, and if so in what proportions, or is it to be levied on the same parties who bore the original cost of the whole set of works.

11. With respect to the agency to be employed, both the Board and the Commissioner suggest that the provisions of Act XX of 1852 should be adopted. This appears to be judicious. It is always better in such cases to adopt existing and general means, if practicable, rather than devise new and special ones; and the provisions of the Act referred to seem well suited to the occasion. With the consent of the parties the Collector may determine the question at issue; but if they are not satisfied with his award, then arbitrators can be appointed under certain definite rules.

12. As noticed by the Commissioner, provision will need also to be made in the Act for enforcing payment of sums determined to be due.

13. Besides the two great classes of works above noticed, it will also be proper, as the Board propose, to provide for enforcing the due repair of irrigation works partly used by Government and partly by private persons, whether zamindars or inamdars; this however is of minor consequence, inasmuch as the number of such works is not considerable. The actual cost of such repair should be shared in proportion to the share in the benefits of the works.

14. With this exposition of their views, the Government resolve to refer the subject to the Board of Revenue with instructions to prepare a bill in communication with the Government Pleader, embodying the necessary provisions to be eventually transmitted to the member of the Legislative Council for this Presidency. A copy of the correspondence with the Commissioner for the Northern Circars recorded at the head of these Proceedings will be forwarded to the Board.

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(4)

Letter—from G. S. FORBES, Esq., Acting Secretary to the Board of Revenue.
To—the Secretary to Government, Revenue Department.
Dated—the 12th February 1856.
No.—410.

I am directed by the Board of Revenue to state that in accordance with the instructions conveyed in Extract from Minutes of Consultation, dated 24th December 1855, No. 1376, the Board have prepared the draft of an Act for facilitating the construction and repair of Public Works affecting the interests of Government and private land owners; but before forwarding it for correction to the Government Pleader, they wish to be informed if they have understood the views of Government rightly on one important point.

2. When private landowners dispute their liability to pay a portion of the cost of a work supposed to benefit their lands, the question is to be referred to arbitration; but the instructions of Government do not state whether this reference to arbitration is to be made when the work is first planned, or after it has been executed.

3. The Board have been led to presume the latter for the following reasons.

It appears just that a land owner should not be called on to pay for a work undertaken without his consent, and perhaps against his judgment and wishes, until he experiences benefit from it; some works occasionally fail and, unless they are undertaken with the consent of the different parties interested, the risk ought to be, the Board think, with Government who orders the construction of the work and executes it through its own officers. The actual cost of a work also differs much from the estimate in many instances, and there would be occasional difficulty in deciding beforehand what portion of the cost of a work each landowner ought in justice to bear. Confusion might therefore arise from the necessity of resorting to arbitration again when the work was completed and its practical effects could be ascertained.

4. The proposed draft is therefore framed on the supposition that Government would in the first instance cause a thorough examination to be made of the cost of a contemplated work, and of the lands which it would affect, and then consult the landowners interested with a view to obtain their co-operation. If they consented, arrangements would be made, either by mutual agreement or amicable arbitration, for executing the work and dividing its cost. But if they refused, the Act would allow Government at its discretion to execute the work, and claim from the parties benefited by it such a portion of the cost as arbitrators might fix.

5. The Board are unanimous in favour of this course; but a doubt has been expressed by one of the members whether it fully meets the intention of Government that, before a work is commenced, the portion of its cost to be borne by each party should be determined and the work be executed at their joint expense. I am directed therefore to seek the instructions of Government on this point.

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(5)

G.O., No. 319, Revenue, dated 19th March 1856.

In this letter, the Board of Revenue request instructions on one point in connection with the proposed Act to enable Government to levy from proprietors of land a proportion of the cost of works of improvement by which they must benefit. The

point is whether in case of proprietors objecting to pay, the liability to pay and the proper proportion of payment shall be determined before the proposed work is undertaken or after it has been completed. The Board advocate the latter course and the Government see no objection to it, or to the mode of proceeding briefly sketched by the Board in paragraph 4. The Government do not find that they have expressed the intention stated by the Board in paragraph 5.

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(6)

Letter—from G. S. Forbes, Esq., Secretary to the Board of Revenue.
To—the Secretary to Government, Revenue Department.
Dated—the 28th April 1856.
No.—1260.

I am directed by the Board of Revenue to submit for the approval of Government, the draft of a Bill "empowering Government to charge proprietors of land "with a share of the cost of improvements undertaken by Government and benefiting "both Government lands and the lands of such proprietors."

2. The Board have prepared this Bill in conformity with the instructions of Government conveyed to them in Extract Minutes Consultation, dated 24th December 1855, No. 1376, and 19th March 1856, No. 319. The draft has been laid before the Government Pleader and has received such verbal emendations as he found it necessary to make: these are noted in *italics*.

3. Mr. Norton's letter is forwarded for the information of Government, and the Draft Act is accompanied by a Minute explanatory of its objects. The rules for the selection of Arbitrators and defining their functions have been extracted from Act XX of 1852.

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(7)

Draft Act.

An Act to facilitate the construction and repair of *certain* Public Works in the Presidency of Fort Saint George.

I. Whenever it shall appear advisable to the Governor of Fort Saint George in Council to construct any *new, or to extend or improve any existing* work or works for the drainage or irrigation of lands, or for their protection from inundation, it shall be competent to him to make a declaration to that effect in a Minute of Consultation, and *thereby* to order that such works be constructed and that the cost of their construction and subsequent repair be borne jointly by Government and by the holders of any permanently settled or inam lands which benefit by them, in proportion to the benefit which each landholder concerned receives.

II. The works *to which this Act is applicable* are river embankments, tanks, channels whether of supply or for drainage, with their bridges, locks and dependent works, weirs of every description and generally all works for the prevention of inundation, or the improvement of drainage or irrigation.

III. The lands to which *this* Act is applicable are Zamindaris or Mootahs, Shotriems, Jaghirs, Inams, and Villages or Estates under rent; that is to say, all lands permanently settled or under rent, or on which the public assessment has been alienated wholly or in part.

IV. It shall be *lawful for* the Governor in Council when the construction of any work is ordered under this Act, to direct that the execution of the work be undertaken entirely by the officers of Government. But in this case no money shall be demanded from any landholder under this Act on account of the work (unless in pursuance of a voluntary engagement) until the work is so far completed as to benefit the lands affected by *the said work*, and then only in the proportion of the benefit obtained. The certificate of the Civil Engineer, or Executive Officer and Collector shall be conclusive evidence that the work is thus useful.

V. When a work has been constructed and its cost apportioned under this Act, the local officers of Government may afterwards undertake its ordinary repair, and, with the orders of the Governor in Council, collect from each party concerned, on an order from the Governor in Council, his share of the cost of such repairs which is to be partitioned in the same ratio as the original outlay.

VI. On the completion of a work the Collector of the district, or such officer as the Governor in Council sees fit to appoint, shall issue a notice calling on the parties interested in the lands affected by the works, and more especially the registered proprietors of such lands, to attend his office, either in person or by an authorised agent, within a period of 15 days to hear the details of the expenditure, and his apportionment of its amount among the parties interested. The notice shall be written in the language of the district and be published in the Collector's office and in the villages where the lands are situated.

VII. If none of the parties interested shall attend, the Collector shall publish in a similar manner a second notice, notifying the portion of the expense of the work awarded by him against each party interested; *after which it shall be lawful for* the Collector on the expiration of 20 days from the date of this second notice, to collect the sums *so awarded* under the *powers* of this Act.

VIII. If all or any of the parties interested shall attend at the Collector's office and shall dispute his award, the points in dispute shall be referred to the determination of Arbitrators to be appointed in the manner hereinafter provided.

Transcribed from Act XX of 1852, section 7.

IX. Two persons shall be chosen to act as Arbitrators on the part of Government, by the Collector or other officer duly appointed as aforesaid, and the party or parties interested in the land shall be called upon by the said Collector or officer to elect, within fifteen days, two persons to act as Arbitrators on his or their part. If there be several parties interested as aforesaid, and they cannot agree within the required period in the election of persons to act as Arbitrators on their behalf, then and in that case each of them shall nominate one person whom he may desire to act on his behalf, and the said Collector or officer shall choose by lot, out of the persons so nominated by the parties aforesaid, or by any of them, two persons to act as Arbitrators on behalf of the parties interested in the land. If only two persons shall be so nominated by the parties interested in the land, they shall be the Arbitrators on behalf of such parties, whether the whole of the parties interested as aforesaid may or may not have been concerned in their nomination. If only one person shall be so nominated, then only one of the persons selected to act as Arbitrator on the part of Government, shall be employed on the duty. If the parties interested in the land shall refuse or neglect, or if, by reason of minority, lunacy or absence from the Presidency, they shall be unable to make any nomination within the required period, then the said Collector or officer shall and may select two impartial persons to arbitrate the matter between Government and the parties interested in the land.

See section VIII of Act XX of 1852.

X. Before the Arbitrators proceed to arbitrate, they shall be required by the said Collector or officer, to appoint an Umpire for the decision of any points whereon they may differ in opinion, when the voices on each side shall be equal. If the Arbitrators cannot agree in the selection of an Umpire, the said Collector or officer shall be authorised to choose some person to act as such.

Section IX, Act XX, 1852.
Do.

XI. In cases wherein the Arbitrators may differ in opinion, if the voices on each side shall be equal, the decision of the Umpire on the point of difference shall be conclusive; in all other cases, the opinion of the majority of Arbitrators shall determine the award.

Section X, Act XX, 1852.
Do.

XII. The Arbitrators shall hold their inquiry under the general superintendence of the Collector or other officer appointed as aforesaid, who shall be competent to exercise towards them such powers and authority, for the purpose of securing their attendance and the due completion of their award, as the Courts of

Judicature may legally exercise towards persons summoned as witnesses before them, for the purpose of compelling such witnesses to attend and give evidence. It shall further be competent to the Officer presiding, in the event of any unnecessary delay on the part of arbitrators, in determining any question referred to them, to call upon them to make their award within a specified time, and in default thereof, to refer such question to the Umpire for his decision.

Section XI, Act XX of 1852.

XIII. The said Collector or other officer appointed as aforesaid shall, on the application of the Arbitrators, summon any witnesses whom the Arbitrators may call for, and whom the parties may not be able to produce before them without such process. He shall also cause the proper forms of affirmation to be executed by any witnesses, whom the Arbitrators may desire to examine upon affirmation, or he may empower the Arbitrators to administer or cause the execution of such affirmation, if the witnesses cannot with convenience attend before him. Any witness who shall refuse or omit to appear when duly summoned by such Collector or Officer, or who shall appear but shall refuse to execute the affirmation to be administered as aforesaid, or who shall refuse to give evidence, shall be liable to the same punishment which would be incurred under the law by a witness refusing to appear or give evidence before a Court of Justice. Any person giving intentionally and deliberately a false deposition, under a solemn affirmation in any case referred to arbitration as above, and upon a point material to the issue thereof, shall be held to be guilty of perjury and shall be liable to the penalties prescribed for that offence by law; and any person causing or procuring another person to commit the offence of perjury, as above described, shall be guilty of subornation of perjury and punishable according to law.

Section XI, Act XX of 1852.

Section XII Act XX of 1852.

XIV. It shall also be competent to the Collector, or other Officer appointed as aforesaid, to demand from the parties interested in the lands affected by the work, the production of any accounts, title deeds, or other documents which may be required by the Arbitrators for the purposes of their enquiry; and in the event of such accounts, title deeds or documents being withheld and the fact of their existence being proved by information given upon solemn affirmation, to order the seizure of such accounts, title deeds and documents wherever they may have been deposited, in the manner prescribed by Section IX, Regulation IX of 1822 of the Madras Code, and to exercise for that purpose the powers thereby vested in Collectors.

XV. The Arbitrators shall take into consideration the statements of the parties interested in the said lands, and of the Collector or other Officer aforesaid on behalf of Government, and after examining the evidence offered on both sides and making any further enquiry that may appear to them necessary shall pass their award. In fixing the portion of the cost of the work to be borne by Government and each party interested, the Arbitrators shall consider the degree of injury prevented or the gain obtained, as well as the extent of the lands affected.

XVI. On the close of the enquiry the Arbitrators or Umpire shall deliver to the Collector or other Officer appointed as aforesaid a full and complete report and award upon the questions submitted to their arbitration under their respective signatures, specifying the portion of the cost to be borne by each party interested respectively, with a solemn declaration subscribed thereto, that the award so given is to the best of their judgment true and impartial and according to the evidence adduced before them, and they shall at the same time deposit with the said Collector or Officer the whole of their proceedings.

XVII. The decision of the Arbitrators or Umpire shall be forwarded to the Board of Revenue for submission to Government, and on being confirmed by the Governor in Council shall be forthwith carried into execution in the manner hereinafter mentioned.

XVIII. The decision of the Arbitrators or Umpire shall not be altered by the Governor in Council in favour of Government, but *upon complaint made and* on proof of partiality or unfairness *on the part of the Arbitrators or Umpire or on proof that the award is in itself inequitable*, the portion of the cost awarded against *any landholder or* landholders may be corrected *by the Governor in Council.*

XIX. If the Arbitrators and Umpire fail to pass a decision within three months from the date of the question being referred to arbitration, it shall be competent to the Governor in Council to carry the award of the Collector into effect under the provisions of this Act.

XX. In cases referred to arbitration under the provisions of this Act, any necessary expenses which may attend the enquiry of the arbitration whether for the diet of witnesses or otherwise, shall be apportioned among *the Government and* all the parties interested in the same manner as the cost of the work.

XXI. The portion of the cost of a work awarded against the landholder under this Act shall be recoverable by the attachment and sale of his real and personal property in the same manner as an arrear of land revenue.

XXII. It shall be optional with *any* landholder to pay the amount awarded against *him*, firstly, in money either at once or by such instalments with interest as the Governor in Council may sanction, or secondly, by an addition to the assessment of *his* lands, in which case the additional assessment *shall* be fixed so as to give annually 6 or 8 per cent. on the sum awarded, with an allowance for the expense of annual repairs, and its details *shall be* arranged by the Collector with the approval of the Board of Revenue and Government. In *the* case *lastly above mentioned*, Government is to be bound to keep the work in repair, or remit this extra assessment.

XXIII. Where Government shall erect *any* new work of irrigation at its own charge, it shall be empowered to fix an equitable rate for water *thereby* supplied to permanently settled, inam, and other lands, and to collect it under the same rules as an arrear of land revenue.

XXIV. Existing works of irrigation partly used by Government and partly by Zamindars, Inamdars, Renters of Villages or Estates, or the holders of Shrotriem Jaghire and Mocassah lands *shall* be repaired at the joint expense of *Government and* all parties interested; and the Governor in Council is hereby authorized to order their repair and the collection of the portion of the cost due by the different landholders interested under the provisions of this Act.

XXXV. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction, that is to say;

Words importing the singular number only shall include the plural, and words importing the plural number only shall include the singular.

Words importing the masculine gender only shall include females.

The word "land" shall extend to tenements and hereditaments of any tenure, and all houses, buildings, walls or appurtenants thereupon as well as land.

The expression "party or parties interested in the land" shall be understood to mean all parties interested in the land either for life or for years, or in remainder, reversion, or succession, and all trustees, "cestui que" *trusts, mortgages, incumbrancers, leaseholders or tenants, not being tenants by the month or at will of such land.*

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(8)

EXPLANATORY MINUTE.

The Act is intended to apply to works which affect lands in Zamindari or Inam, as well as in Government villages.

2. The wording of the draft is intended to be such as to allow Government to order an extension or improvement of existing works, as well as the construction of entirely new ones.

3. The repair of works now existing, save those of Irrigation, are left to be borne as heretofore by Government, in accordance with Extract Minutes of Consultation, 24th December 1855, paragraph 10.

Section I.—Authorises Government to construct not only works to protect lands from injury, such as river embankments, but also works to improve the value of lands, such as channels for drainage or irrigation, &c. This is in accordance with the orders of Government given in Extract Minutes of Consultation, dated 24th December 1855, paragraph 7.

4. It is further provided that Government may decide of its own authority, what works are to be undertaken. This is laid down by Government in Extract Minutes of Consultation, 24th December 1855, paragraph 6; but in practice, efforts would first be made to obtain the concurrence of the different landowners interested.

Section IV.—Appears necessary to ensure the construction of works ordered by Government when the other parties interested do not give their concurrence, or appear unable to aid in constructing them with proper skill. It will not hinder Government allowing landowners to undertake portion of such works as they areable and willing to perform. As a security to landholders, it is provided that they are not to be called upon for money under this Act, except with their consent, until they actually derive benefit from a work.

Section V.—In Extract Minutes of Consultation, 24th December 1855, paragraph 10, it is desired that provision should be made, as far as possible, for deciding when the cost of repairs is to be regarded as a local charge, and when to be recoverable from the body of contributors generally. It is considered that the former can only be the case when the parties interested perform each their part of the work by voluntary agreements; and when all parties are thus willing to act harmoniously, the provisions of the Act would not be required. On this account and in consideration of the difficulty of providing for a point so variable in its nature by a legal enactment, it is thought best to limit the draft to authorising Government to repair the works which it constructs under this Act.

Section VI.—This section speaks of the Collector of the district or such officer as the Governor in Council sees fit to appoint, because the same work may affect lands in more than one district.

5. The arrangement that the Collector is first to propose an apportiontment of the cost of a work seems necessary and agrees with the intention of Government as expressed in Extract Minutes of Consultation, 24th December 1855, paragraph 11.

Section VII.—Is proposed as necessary. The Act contemplates landowners who will not voluntarily take part in constructing works, and it cannot be expected that such parties will attend the Collector's office to be taxed unless compelled.

Sections VIII to XIV—are taken from Act XX of 1852.

Sections XV and XVI—resemble sections 13 and 16 of Act XX of 1852.

Section XVII.—This section is made necessary by sections XVIII and XXII.

Section XVIII.—The question of providing for any appeal from the decision of the Arbitrators presented difficulty. Under section XIV, Act XX of 1852, the Civil Court can set aside the award, upon corruption being charged and proved against the Arbitrators or Umpire, and a second set of Arbitrators is then to be chosen whose decision is final.

6. But in the cases under the present Act, the point will turn principally on the extent of land benefited by a work and on the degree of the benefit. On these questions it seems more proper that Government should consult the Revenue Board, than that the decision should be left to a Civil Court, especially when the lands affected may be in the jurisdiction of several courts. But when the award is therefore left to be confirmed by Government, it seems proper that Government should not alter the award to its own benefit, and an enactment to this effect seems unobjectionable, as the work to which the Act refers, is undertaken by the express order of Government, who are thus able beforehand to weigh all the probable gain and risk. The Board are further led to believe that such a clause will meet the concurrence of Government, who have expressed a wish (in paragraph 3 of Extract Minutes of Consultation, dated 13th July 1855) that the arbitration should be so arranged as to be beyond suspicion.

Section XIX.—This section goes one step beyond Act XX of 1852 by providing for such a contingency as the failure both of the Arbitrators and the Umpire to pass a decision.

Section XX.—Under Act XX of 1852 Government justly bear the expense of arbitration, because the point at issue is the value of the land which has been taken by them without the owner's consent. Here there is a difference, and the expense of arbitration like the cost of the work, seems fairly to belong to all the parties benefited.

Section XXI.— By making the land answerable, all difficulty in finding out its real owner is removed. If considered expedient, the right of sale might be limited to the land affected by the work as recommended in the Board's Proceedings of 26th October 1855, paragraph 6.

Section XXII—Is founded on the instructions of Government given in Extract Minutes of Consultation, 24th December 1855, paragraph 9. When a landowner agrees to pay an extra assessment instead of his share of the outlay, it has appeared desirable to free him from other demands for repairs.

Section XXIII--Is founded on the instructions of Government given in Extract Minutes of Consultation, 13th July 1855, paragraph 4, with an explanatory clause, that no new charge is to be made for water supplied, unless Government bears the cost of the work.

Section XXIV—Is founded on the instructions of Government given in Extract Minutes of Consultation, 24th December 1855, paragraph 13.

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(9)

G.O., No. 612, dated 14th June 1856.

The Board of Revenue lay before Government with this letter, the Draft of an Act "to empower Government to charge Proprietors of land with a share of the cost of improvements undertaken by Government, and benefiting both Government lands and the lands of such Proprietors," prepared in pursuance of the order of Government of December 24th, 1855, No. 1376. The Government fully approve of this Draft except in one particular, viz., in respect to Section XXIII. The insertion of this section is in accordance with the order of Government in Extract Minutes Consultation 13th July 1855; but on further consideration the Governor in Council was subsequently of opinion that it would have place more properly in the Draft Act for the conservation of Irrigation works, and in Extract Minutes Consultation, 21st May 1856, No. 747, the Government Pleader was instructed accordingly. The Board of Revenue will now be good enough to ascertain whether, in Mr. Norton's opinion, there is any objection to the provision being included in that enactment; and if his reply should be in the negative, the Section will be omitted from the present Draft Act.

2. The Governor in Council thinks likewise that the Act now before Government ought to give power to compel Zamindars, and Proprietors or holders of settled estates or holdings and of Jaghirs, to make the second class roads in their estates, which in the general scheme of roads for the country set forth in Extract Minutes Consultation 27th May 1856, No. 785, the Government have declared ought to be made by such Zamindars and Proprietors within their respective estates. A copy of the Resolution of Government here referred to has been communicated to the Board; and they are now requested, in communication with the Government Pleader, to prepare draft of provisions to the effect above stated, with reference to paragraph 12 of that Resolution. The Act should empower the Government to determine the roads to be thus made, so as to harmonize with the roads of the same class in the adjoining Government Taluks; it should also give power to Government to enforce their decision and, in case of refusal or neglect, to make or repair the road and recover the cost from the estate.

Note.—See also paragraphs 27 and 28 of Extract, Minutes of Consultation, No. 173, dated 18th February 1857, and paragraph 4 of G.O., No. 1014, dated 29th July 1850 (pages 35—37 *supra*).